

Jose Nunez

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,
HAYWARD HALL OF JUSTICE

PEOPLE OF THE STATE OF CALIFORNIA

v.

JOSE HECTOR NUNEZ JR

Defendant(s).

NO.
COMPLAINT

PFN

CEN:

T/A 12/15/04; DEPT. 502; 2:00 PM

The Undersigned, being sworn says, on Information and belief, that JOSE HECTOR NUNEZ, JR did, in the County of Alameda, State of California, on or about July 10, 2004, commit a Felony, to wit: FALSE IMPRISONMENT BY VIOLENCE, a violation of section 236 of the PENAL CODE of California, in that said defendant(s) did unlawfully violate the personal liberty of JANE DOE, said violation being effected by violence, menace, fraud, and deceit.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,
Tuesday, December 14, 2004

/s/ Hayward PD-2004-31278

KEVIN MURPHY
Deputy District Attorney
State Bar #118243 cmr
Alameda County, California

REPORT NUMBER 2004-31278

HAYWARD POLICE DEPARTMENT - HAYWARD, CA

INCIDENT REPORT

Location of Occurrence: 268 Jackson Street Beat: CDay/Date/Time of Occurrence: From: Sunday / 07 - 11 - 04 / 0045HRS To: Sunday / 07 - 11 - 04 / 0330HRSType of Incident: Sexual Battery Offense Code: _____ Attempt Only ☐

Location Type:

- | | | | | | |
|--|--|---|---|---|---------------------------------------|
| <input type="checkbox"/> APartment/condo | <input type="checkbox"/> COMmunity/public building | <input type="checkbox"/> FAST food | <input type="checkbox"/> INDUstrial/manufacturing | <input type="checkbox"/> OTHER (field/lot) | <input type="checkbox"/> SCHool |
| <input type="checkbox"/> ATM | <input type="checkbox"/> CONvenience Store | <input type="checkbox"/> GAS station | <input type="checkbox"/> JAIL | <input type="checkbox"/> PLAYground/park | <input type="checkbox"/> STORage/Comm |
| <input type="checkbox"/> BANK/financial | <input type="checkbox"/> DEPartment Store | <input type="checkbox"/> HIGHway/street | <input type="checkbox"/> LIQuor | <input checked="" type="checkbox"/> PARKing lot | <input type="checkbox"/> STORage/Res |
| <input type="checkbox"/> BAR/restaurant | <input type="checkbox"/> DRUG/medical | <input type="checkbox"/> HOSPital | <input type="checkbox"/> MALL | <input type="checkbox"/> RESidential(single) | <input type="checkbox"/> SUPermarket |
| <input type="checkbox"/> CHURch/synagogue/mosque | <input type="checkbox"/> DUPlex | <input type="checkbox"/> HOTel/motel | <input type="checkbox"/> MOBile home | <input type="checkbox"/> RETail/commercial | <input type="checkbox"/> THEater |
| | | | | | <input type="checkbox"/> VEHICLE |

Involves:

- | | | | | |
|------------------------------|---|----------------------------------|--------------------------------|-----------------------------------|
| <input type="checkbox"/> N/A | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Alcohol | <input type="checkbox"/> Drugs | <input type="checkbox"/> Computer |
|------------------------------|---|----------------------------------|--------------------------------|-----------------------------------|

Case Status:

- ☐ Open
☐ Suspended
☒ Cleared

Clearance Date: 11 - 17 - 04

Clearance Type:

- | | |
|--|--|
| <input checked="" type="checkbox"/> ADult-ARRest | <input type="checkbox"/> JUV-ARRest |
| <input type="checkbox"/> ADult-EXCeptional | <input type="checkbox"/> JUV-EXCeptional |
| <input type="checkbox"/> UNFOunded | |

Special Reporting:

- | | | | | | | |
|---|-------------------------------|--|-------------------------------------|-----------------------------------|--|---|
| <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Gang | <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Hate Crime | <input type="checkbox"/> Homicide | <input type="checkbox"/> Officer Injured | <input type="checkbox"/> Victim over 60 |
|---|-------------------------------|--|-------------------------------------|-----------------------------------|--|---|

Weapons:

- | | | | | |
|---|--|---|--|----------------------------------|
| <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Other Dangerous Weapons | <input type="checkbox"/> Knife/Cutting Instrument | <input type="checkbox"/> Personal Weapons (hands, feet, fists) | <input type="checkbox"/> Firearm |
|---|--|---|--|----------------------------------|

<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI) [REDACTED]			Race HIS	Sex F	D.O.B. [REDACTED]	
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward			PFN #	Residence Phone [REDACTED]		
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School			DL/ID #	Other Phone - -		
<input type="checkbox"/> Informant <input checked="" type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI) Nunez, Jose			Race HIS	Sex M	D.O.B. - -	
	Residence Address (Number, Street, Apt., City, State) <input type="checkbox"/> Hayward			PFN #	Residence Phone - -		
	Other Address <input checked="" type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School HAYWARD POLICE DEPARTMENT			DL/ID #	Other Phone 510 - 293 - 7000		
Vehicle Status <input type="checkbox"/> Suspect <input type="checkbox"/> Victim	License Number	State	Vehicle Type	Body	Year	Make	Model
	Color		Further Description:				

Narrative:

Please see attached narrative.

Value of Loss:	Date/Time Reported: 10 - 24 - 04 / 1012HRS07	Evidence: <input type="checkbox"/> Photos <input type="checkbox"/> Prints <input type="checkbox"/> Other	Follow Up Assigned To: DA Insp.	Entry Clerk
Officer/Computer I.D. Inspector Steve Schwartz #213 SS0368	Victim Advised Per: 293PC <input type="checkbox"/> Yes <input type="checkbox"/> No	Victim Assistance Advised <input type="checkbox"/> Yes <input type="checkbox"/> No	Approved #213 [Signature]	Date/Time: 12/1/04 1500

Routing: CLETS, DA, DB, GANG, IA, JUV ARR, JUV 300, PROP, VICE, YFSB, DETECTIVE, NARCOTICS Other:

HAYWARD POLICE DEPARTMENT- HAYWARD, CA

☐ Additional Name/Vehicle Information Attached

<input checked="" type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)				Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward				PFN #	Residence Phone	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School				DL/ID #	Other Phone	
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input checked="" type="checkbox"/> Parent	Name (Last, First, MI)				Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward				PFN #	Residence Phone	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School				DL/ID #	Other Phone	
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input checked="" type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)				Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward				PFN #	Residence Phone	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School				DL/ID #	Other Phone	
Vehicle Status <input type="checkbox"/> Suspect <input type="checkbox"/> Victim	License Number	State	Vehicle Type	Body	Year	Make	Model
	Color		Further Description:				
Vehicle Status <input type="checkbox"/> Suspect <input type="checkbox"/> Victim	License Number	State	Vehicle Type	Body	Year	Make	Model
	Color		Further Description:				

SUSPECT DESCRIPTION	VICTIM STATUS	PHYSICAL EVIDENCE	WITNESS ATTEMPTS	SUSPECT STATEMENT	FOLLOW-UP
SUSPECT STATUS	NARRATIVE	CRIME SCENE DESCRIPTION	WITNESS TESTIMONY	SUSPECT RECORD	CASE STATUS

Per Penal Code Section 293 I advised victim(s) that his/her name will become a matter of public record unless victim(s) requests confidentiality pursuant to Government Code Section 6254. Confidentiality requested: ☐ Yes ☐ No

Signature of informed party: _____ Date/Time: _____ / _____

HAYWARD POLICE DEPARTMENT- HAYWARD, CA

ADDITIONAL NAMES

<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input checked="" type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input type="checkbox"/> Hayward	WHT	F	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input checked="" type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward	WHT	M	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input checked="" type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward	HIS	M	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input checked="" type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input checked="" type="checkbox"/> Hayward	HIS	M	
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input type="checkbox"/> Hayward			
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input type="checkbox"/> Hayward			
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input type="checkbox"/> Hayward			
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone
<input type="checkbox"/> Informant <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Parent	Name (Last, First, MI)	Race	Sex	D.O.B.
	Residence Address (Number, Street, Apt., City, State) <input type="checkbox"/> Hayward			
	Other Address <input type="checkbox"/> Business <input type="checkbox"/> Mailing <input type="checkbox"/> School	PFN #		Residence Phone
		DL/ID #		Other Phone

NARRATIVE:

October 24, 2004 (Sunday):

At 0835 HRS, Inspector Sergeant Mark Mosier contacted me at home. Sergeant Mosier told me that he needed me to respond to an investigative call-out. Sergeant Mosier stated that he needed me to meet him at the _____, located at _____, Dublin. He advised me that Inspector Mark Stuart would be assisting me on this case.

At 1012 HRS Inspector Stuart and I met with Investigations Lieutenant Reid Lindblom and Sergeant Mosier. Sergeant Mosier told us the following information:

On October 23, 2004 at approximately 1825 HRS, communications operator B. Ellen contacted patrol watch commander Lieutenant G. Branson. Ellen told Lieutenant Branson that an individual identifying herself as _____ called the dispatch center. _____ said that her sister, _____ (hereinafter referred to as VICTIM), was a missing juvenile reported to the Alameda County Sheriff's Department. She said VICTIM had been missing since May 2004 and had not been in contact with the family. _____ said that at approximately 1800HRS VICTIM called her at her place of employment _____ VICTIM told her sister that she was okay and had been living with a man and his two small children.

During the conversation VICTIM revealed to her sister that the Hayward Police had contacted her, yet did not take her in for being missing. [REDACTED] asked why the police did not arrest her (for an outstanding juvenile warrant) or bring her back to her parents. VICTIM became very emotional and started to cry. She then told her sister that she had been stopped by a Hayward police officer who detained her and made her take her clothes off. VICTIM said that the officer took her behind a building and had her strip naked. He then made her bend over and spread her buttocks. VICTIM told [REDACTED] that based upon this incident she was able to avoid arrest. Furthermore, VICTIM told her that it happened twice in the same night. [REDACTED] asked if she [VICTIM] had gotten the officer's name. VICTIM said that according to his nameplate on his uniform it was "J. Nunez."

[REDACTED] was shocked and worried. She told her sister that she needed to come home right away. She told VICTIM that she would leave work and pick her up immediately. VICTIM became frightened and hung up the telephone. [REDACTED] said that her work did not have caller ID and she did not know from where her sister was calling. (Based upon the static on the line [REDACTED] assumed it was a cellular telephone.) [REDACTED] was concerned and immediately contacted the Hayward Police Department to report what her sister had told her.

Sergeant Mosier told us that this was a highly sensitive investigation and we were to attempt to find VICTIM and ascertain whether she had made those statements to her

sister. If the statements had been made, we were instructed to conduct a criminal investigation into the allegations.

Additionally, Sergeant Mosier told us that the allegations had also been reported to the Alameda County Sheriff's Department. VICTIM had been initially reported as missing out of their agency and subsequently, [REDACTED] called them and let them know that her sister had made contact with the family. Upon making contact with the sheriff's deputy (B. Salby), [REDACTED] told him what VICTIM had said regarding the Hayward officer. Deputy B. Salby wrote a supplemental police report to their original missing person report (04-10521).

Inspector M. Stuart and I left the [REDACTED] at 1042 HRS. I contacted Ms. [REDACTED] via cellular phone and arranged for us to interview her at her residence, [REDACTED]. We arrived at 1050HRS. Ms. [REDACTED] related the same account of the telephone call that was told to Lieutenant Branson.

[REDACTED] told us that her sister has had problems with lying in the past. She said that her sister has been untruthful about many things; however, she felt that in this instance VICTIM was telling the truth. [REDACTED] said that VICTIM's attitude was very solemn and very sad. [REDACTED] stated that she understood how serious the allegations were and understood the repercussions on the officer's career if these allegations were exaggerated or untrue. She felt that based upon the severity of the allegations, she was obligated to contact the Hayward Police Department. [REDACTED] said that she did not know Officer J.

Nunez, nor did VICTIM, to the best of her knowledge. When [REDACTED] originally called the dispatch center she asked communication operator Ellen if, in fact, a J. Nunez was an officer at the Hayward Police Department. [REDACTED] told us that although she did not know where her sister was, she felt that she might be staying in or around the [REDACTED] [REDACTED] in Hayward. She stated that people in the neighborhood had told her mother that they believed VICTIM was in that area.

Inspector Stuart and I left her residence and went to the Hayward Police Department. We obtained a photograph of VICTIM from the CABS system and conducted an internal records check. There were no documented contacts between Officer J. Nunez and VICTIM. This included police reports, traffic reports, traffic citations and field interview cards. VICTIM had several contacts over the years and had been arrested one time. However, Officer J. Nunez's name never appeared in any related documents.

October 25, 2004 (Monday):

Inspector Stuart and I began a lengthy investigation into finding the whereabouts of VICTIM. After contacting businesses and neighbors in the area, we were able to determine that VICTIM was staying with a male who went by the [REDACTED] f' [REDACTED]. He was described as a Hispanic male, in his thirties, who had two small children.

Through investigation we were able to identify him as [REDACTED] date of birth [REDACTED]. We contacted [REDACTED] on Monday, October 25, 2004 at about 2300HRS, in front of the [REDACTED] located at [REDACTED]. I explained to

██████ the urgency associated with finding VICTIM. He told us that she was staying on ██████████ Hayward. He stated that he would be happy to take us to where VICTIM was living.

October 26, 2004 (Tuesday):

Inspector Stuart and I drove ████████ to ██████████, Hayward. We waited outside of the address for approximately thirty minutes. VICTIM drove up to the location in a green compact car. We detained VICTIM by the vehicle at approximately 0100HRS.

Officer A. Passadore of the patrol division was called to our location to assist in transporting VICTIM back to the police department. I rode with VICTIM and Officer Passadore back to HPD, where she was then taken to the Inspector Bureau. VICTIM was taken to interview room 222. I provided her with a sandwich and a soda.

Inspector Stuart and I conducted an interview with VICTIM in room 222. The interview was recorded on both audiotape and videotape. The interview commenced at 0124HRS. The following is a summation of that interview:

VICTIM told us that she left her mother's home on May 13, 2004. She has been considered a runaway since that time. VICTIM stated that she called home one time (on August 24, 2004) since she left. She told us that she has been staying at different people's homes over the course of the summer.

We explained to VICTIM that we were investigators and that we wanted to ask her some questions. As soon as I said this, VICTIM replied, "About the cop?" We told her that we were assigned to investigate her claims and wanted to hear her account of the situation.

VICTIM stated that the incident happened on July 10, 2004 at about 0118HRS. (We later asked her how she remembered the date and time so well. She stated that it was five days before her birthday and she had a cellular telephone with her and remembered looking at the time stamp on the readout.) She said that the incident started in front of the 7-11 store located on Jackson Street near Park Street (339 Jackson Street).

VICTIM said that she was "hanging out" with several friends near the 7-11 store.

According to VICTIM, her friends were drinking alcohol, but she only had several sips.

She claimed that she was not inebriated. VICTIM said that the friends eventually left and she was in front of the store alone. Several minutes later her ex-boyfriend, [REDACTED]

[REDACTED] 19 years old, unknown date of birth), drove into the lot. She went over to [REDACTED] and spoke with him for several minutes. Once he left VICTIM was in the parking lot of 339 Jackson Street by herself. She stated that she was in the lot near the Discovery Inn Motel (northwest part of the parking lot).

VICTIM saw a fully marked, black and white, Hayward police vehicle pull into the lot.

The officer got out of the vehicle and approached VICTIM. VICTIM said that according to his nameplate the officer was "J. Nunez." She described him as having short hair and a little "chubby." VICTIM stated that she had never seen the officer prior to that occasion.

The officer asked VICTIM what her name was. She told him she was "[REDACTED]" with a date of birth of [REDACTED]. She stated that she was from Newark.

(VICTIM told us that this was a real person, who happened to be a friend of hers. She knew that the friend did not have any wants or warrants and was over eighteen.) The officer asked her if she was drunk. VICTIM said that she had taken several sips of alcohol, but she was not drunk. He then asked her if she had "anything" on her (ostensibly referring to narcotics). VICTIM said she did not and stated, "Do you want to search me?"

The officer replied, "I guess I am going to have to do that." He told VICTIM to turn around and he put her in handcuffs. He placed her in the back of his patrol vehicle, on the passenger side. The officer got into the driver seat of the car and started to drive away. VICTIM asked if she was being taken to jail. The officer told her that she was not, but that he was taking her "over there" so that she would not be embarrassed when he searched her.

The officer drove out of the parking lot onto Sycamore Avenue. He turned northbound on Sycamore and went out to Jackson Street. He drove eastbound on Jackson Street, made a U-turn on and went westbound and turned into the Kragen Auto parking lot located at 268 Jackson Street. VICTIM said he took her to the back of the parking lot. He turned the car around and faced it toward Jackson Street. The officer exited his vehicle and walked around to the passenger side. He opened the door and let VICTIM out. He unhandcuffed her and told her to lift up her shirt. VICTIM complied. She asked

the officer if he wanted her to take off her bra. He said he did and she took it off and handed it to him. VICTIM told us that she took off her sweatshirt and tank top and was naked from the waist up. She held her hands over her breasts initially because she was embarrassed. The officer then took a pen and lifted her breasts as if to look underneath. He did this one breast at a time. As he was doing this, he was mumbling something underneath his breath. (VICTIM described it as a moaning sound.)

The officer next asked if she had anything in her pants or underwear. She replied that she did not have underwear on and did not wear underwear unless she was on her menstrual cycle. The officer felt around her pant waistband, while they were still on her hips. He then said, "Well how do I know you don't have nothing tucked up there?" VICTIM pulled her pants down to her ankles and said, "Look, I don't have nothing" and spun in a circle. VICTIM stated that the officer touched her vagina area with one bare hand, while shining his flashlight on her with the other hand. He then instructed her to turn around, at which time he touched her buttocks with his bare hand and told her to bend over and spread her buttocks. VICTIM said she could sense the flashlight beam on her body as he was examining her.

After he was done looking VICTIM pulled her pants up. She told him that she knew he was not going to arrest her because what he had just done was illegal. The officer told her what he did was legal. The officer then said, "I won't charge you with nothing, but I better not see you walking on the streets anymore."

VICTIM replied, "You won't, you won't," and ran away from the officer. She immediately went to her friend [REDACTED]'s home, located at [REDACTED] (This residence is located just outside of the parking lot of the [REDACTED].) VICTIM said that [REDACTED] was home and was with a male friend (known only as [REDACTED]). VICTIM came in the house and told them that she just got "butt naked for a cop" in the Kragen Auto parking lot. VICTIM did not think that they believed her. [REDACTED] told her that she needed to contact the police if this really happened. VICTIM thought that if she went to the police she would be arrested for her outstanding juvenile warrant. VICTIM was adamant that they not call the police.

VICTIM decided that she was going to go to her friend [REDACTED] house and spend the night. She said that [REDACTED] offered to give her a ride, but she declined. [REDACTED] then told her to turn her cellular telephone on and she [REDACTED] would talk to her while she walked to [REDACTED] house. [REDACTED] called from her home telephone to VICTIM on her cellular telephone. Once they had a connection VICTIM left [REDACTED] home and started to walk southbound on Park Street. She came to Jackson Street, where she crossed over in the crosswalk. [REDACTED] was watching her from her bedroom window. [REDACTED] had an unobstructed view from where she was all the way to the dead end of Park Street on the south side of Jackson Street.)

As she was crossing Jackson Street, VICTIM said that [REDACTED] told her she had seen a police car and it was coming her [VICTIM's] way. [REDACTED] told her to come back to her house, but VICTIM said she was okay. VICTIM said she was about halfway down Park

Street (south of Jackson Street) when the officer pulled up behind her. He was still sitting in the driver seat and spoke to her through the open passenger window. When he saw she was on the cellular telephone he told her to hang up. VICTIM pretended to hang up but maintained an open connection with [REDACTED]. The officer confronted her and asked her what she was still doing on the street. VICTIM said she was walking to a friend's house. He asked her if she had been drinking more alcohol. VICTIM said she had not been drinking. He asked her if she had "anything on her." She again replied she did not. The officer placed her in the back of his patrol car (in the caged backseat); however, he did not handcuff her this time.

VICTIM stated that after he placed her in the backseat and while he walked around the car to get into the driver side, she whispered in the telephone and told [REDACTED] to stay on the line. The officer drove southbound on Park Street to the dead end and made a U-turn. He drove northbound on Park Street back to Jackson Street. He crossed Jackson Street and went back into the Kragen Auto parking lot. He entered the lot near the Hayward dialysis center, located at 254 Jackson Street. He drove to the very rear of the parking lot and made a U-turn, now facing his patrol car southbound. (The total distance traveled was approximately 1585 feet. I measured this distance using a roll-a-tape measuring device.) The officer got out of the driver side and walked around the car. He opened the door and let VICTIM out. He told her to once again take off her sweatshirt. VICTIM began to comply and had the sweatshirt up to her neck when [REDACTED] interrupted them. [REDACTED] walked up to the vehicle and confronted the officer.

VICTIM said that she put her shirt back down and started to leave. [REDACTED] asked her what the officer's name was. VICTIM yelled, "J. Nunez" as she ran away. VICTIM said she ran back to [REDACTED] house and went inside. [REDACTED] thirteen-year-old son was inside. VICTIM waited until [REDACTED] came back inside the house. [REDACTED] also walked back in the house. (It was unclear where he was during the incident.) [REDACTED] told VICTIM something to the effect of he was sorry that he did not believe her the first time. [REDACTED] told her that she needed to call the police. Again VICTIM refused and decided to leave. She left the house and stated that she hid on the street until later that morning. She met up with another friend and left the city of Hayward.

VICTIM said that she has not seen nor had contact with the officer since the day of the incident. She felt that she could pick him out of a set of photographs if given the opportunity. Inspector Stuart had compiled a group of six officer photographs, including police officer Jose Nunez (badge 468). (Jose Nunez is the only sworn police officer with the Hayward Police Department with the last name of Nunez.) Upon showing VICTIM the photographs she immediately identified Jose Nunez as the officer in question. Inspector Stuart had her circle and sign the photograph of Nunez.

We concluded the taped interview with VICTIM at approximately 0245HRS. We asked VICTIM if she would be willing to drive with us out to the area where the incident occurred and point out the areas where the different acts took place. She willingly agreed. Inspector Stuart and I drove her to Park Street where she pointed out [REDACTED] home [REDACTED] As we pulled in front of the house we could see a

female standing on the porch. VICTIM told us that the female was [REDACTED] We called her over to the car and identified ourselves. She immediately recognized VICTIM in our backseat. VICTIM told her that we were investigating the incident with the officer [REDACTED] nodded and said something to the effect that she caught the dirty cop and was glad VICTIM had finally gone to the police. We asked her if she was willing to give a statement, to which she replied that she would be very willing. We made arrangements to meet with her later that day.

We next had VICTIM reenact the contact from the 7-11 store and show us where Officer Nunez first contacted her and how he drove her across the street to the Kragen Auto Parts. She guided Inspector Stuart and I to each specific location until we became familiar with where everything took place.

At approximately 0345HRS we took VICTIM home to [REDACTED]. She was left in the care and custody of her mother, [REDACTED]. Inspector Stuart and I returned to the Hayward Police Department.

At approximately 1630HRS, Inspector Stuart and I went back to [REDACTED] home on [REDACTED]. We explained who we were and what we were investigating. [REDACTED] said that she would be happy to give her account of what happened that night. I tape-recorded the statement on an audiocassette. The following is a summation of that interview:

█████ stated that the incident happened on either July 8 or July 10, 2004. She remembered the date because her birthday was several days before and VICTIM's was several days after. She estimated that she first became involved at about 0100HRS. She said that she was with a friend (first name of █████ when VICTIM came to the front door. █████ invited her into her home. VICTIM said, "You are not going to believe what just happened to me." █████ asked her what happened and VICTIM told her that she was at 7-11 when she was contacted by a police officer. VICTIM told █████ that the officer found a pipe, some "dope" and a scale on her person. The officer handcuffed her and put her in the back of the police car. He then drove her across the street into the driveway of the Kragen Auto Parts store.

The officer drove to the rear of the Kragen parking lot and got VICTIM out of the car. VICTIM said the officer had her get "butt booty ass naked" for a cop. █████ said that her initial reaction was not to believe VICTIM. She said she was very calm and did not seem upset. She was demonstrating what happened to her to both █████ and █████ VICTIM explained that she took her own clothing off at the direction of the officer. █████ stated that VICTIM said the officer did not touch or fondle her. She did say that she could feel the warmth from the flashlight on her skin.

█████ said that she instructed VICTIM to call the police to report the incident, but VICTIM was not interested. She talked to VICTIM for about fifteen to twenty minutes at which time VICTIM decided to go back to the house where she was staying, which █████ stated was on █████ directly south and across █████. █████ stated that she

could see the house from her bedroom window. [REDACTED] offered to walk with her to the house, but VICTIM declined stating she would be fine. [REDACTED] decided that she would talk to VICTIM on her cellular telephone from her [REDACTED] home phone while VICTIM was walking to the other house.

They maintained a connection on the cellular telephone and [REDACTED] maintained a visual on VICTIM from her bedroom window. She watched as VICTIM got to Jackson Street and started to cross in the crosswalk. VICTIM then stated, "Oh my gosh, there he is, I can see him." [REDACTED] told her to come back to her house, but VICTIM said she would be fine and would continue to her destination. [REDACTED] could see the lights from the police car in the reflection on the Kragen windows. [REDACTED] knew it was a police car by the deep sound of the engine.) As the vehicle pulled to Park Street from behind the Kragen, [REDACTED] could see that it was a black and white Hayward patrol car. She could see the officer shining the searchlight around the area.

[REDACTED] stated that she could hear VICTIM through the telephone and could see the patrol car pull up next to her on Park Street, south of Jackson Street. The officer appeared to be talking to VICTIM through the passenger window. [REDACTED] could only hear VICTIM's side of the conversation. When the officer spoke all [REDACTED] could hear was a mumbling sound (presumably because of the distance from the speaker). [REDACTED] heard VICTIM say, "What now Officer Nunez?" She then heard a mumble from the officer and VICTIM say, "For what? What are you pulling me over for now?" After more mumbling from the officer,

VICTIM said, "What!? For drinking? I don't even drink." The officer said something else and then VICTIM said, "Drunk in public?"

█ could then see VICTIM getting into the police car. She did not believe that VICTIM was handcuffed, because she was talking to █ on the cellular telephone.

█ could hear VICTIM talking to the officer and could hear her say that if she was going to jail she would be let out right away because she had not been drinking and the test would show that. █ next heard VICTIM say, "What are you pulling into Kragen's for again?" The manner in which she was talking led █ to believe that VICTIM was trying to tell her where she was. She described going to the back of the Kragen's parking lot.

█ walked out of her house and walked over to the parking lot. She said that initially she was going to wait for a few seconds so that if the officer was going to undress her again she could catch him in the act. However, she decided that she could not wait and walked over to the parking lot. She stated that █ was behind her about ten to fifteen feet. As she walked over to the parking lot, she noticed the next-door neighbors were having a party. There was a group in the front driveway. █ said she yelled to them, "C'mon. You guys want to see a dirty cop stripping my friend down?"

█ walked to the back of the parking lot. When she came around the back she said that she saw the police car backed in with no vehicle lights on. She said that the area they were in was dark. She said the officer and VICTIM were by the trunk area of the police

car. All of VICTIM belongings were on the top of the trunk. VICTIM was wearing a hooded sweatshirt, but she was in the process of taking it off or putting it back on. The sweatshirt was around her neck area and her arms were up. Her bra was undone and her breasts were exposed. Her pants were unzipped, but not pulled down.

Once [REDACTED] saw this she immediately confronted the officer. She started to yell at him and challenge him as to what he was doing. The officer was extremely calm and stated, "I am doing my job." He said that he had pulled her over as she was walking through the parking lot. [REDACTED] confronted him by saying, "Bullshit, I just seen what happened." [REDACTED] asked why VICTIM's clothes were off. The officer told her that VICTIM was undressing herself. [REDACTED] told me that the officer was extremely calm and acted as if he was doing nothing wrong. [REDACTED] then realized that VICTIM had left and [REDACTED] had walked away. [REDACTED] felt as if it were a losing battle, so she started to back away from the officer. [REDACTED] was able to see the officer's nameplate. She told me she saw his nameplate said "J. Nunez."

[REDACTED] started to walk away. She said that as she reached the end of the parking lot and was about to turn toward her house, she saw another Hayward police unit pull into the parking lot. In looking back, she believes that at one point Officer Nunez spoke into his police radio microphone while she was yelling at him. She now believes this might have been him calling for a backup unit. When she got back to her house VICTIM was gone. She did not see VICTIM the rest of the night and did not see her until the next morning when VICTIM came back to see if she [REDACTED] had seen her boyfriend, [REDACTED] They

spoke briefly about what had happened the night before. [REDACTED] had told VICTIM several times to go to the police. She did not know why VICTIM would not call the police at that time. She said now she realizes it is because VICTIM was a runaway and did not want to go home or to jail.

[REDACTED] stated that she was completely sober the night of the incident. She was alert and completely coherent when this took place. [REDACTED] told me that she could identify the officer if she saw a photograph of the officer. Inspector Stuart arrived back to the house with a series of photographs. We showed [REDACTED] six photographs of Hayward police officers. [REDACTED] picked out Officer J. Nunez (#468) and stated that he most resembled the officer on the night of the incident. She told me that she had never had dealings with him prior to the incident, nor had she dealt with him following the incident. [REDACTED] also stated that she would be willing to submit to a polygraph examination to back up her claims.

The interview concluded at 1709HRS. Inspector Stuart and I left the residence and returned to the Hayward Police Department.

At approximately 2200HRS, Inspector Stuart and I called Officer Nunez to the Inspector Bureau. (Officer Nunez was working his usual patrol shift at the time and was on-duty.) Officer Nunez came to the Inspector Bureau and met with us. We explained that we were conducting a criminal investigation and that he was the subject of a complaint. We advised him that he was allowed to have the interview recorded and we also told him he was allowed to consult with a police association representative. Inspector Stuart then

read Officer Nunez his rights as per Miranda from the pre-printed HPD form. Officer Nunez stated that he wanted to speak with an association representative.

We stopped the interview and I asked him which representative he preferred. He stated it did not matter to him. I told him that Officer Mike Sorenson (POA vice-president) was on-duty and available. He said Sorenson would be fine. I stepped out of the office and had Officer Sorenson respond to the Inspector Bureau. Upon his arrival I told Officer Sorenson that Officer Nunez was being investigated for police misconduct, possibly of a criminal nature. I told him that it stemmed from a police contact with a female.

Officer Sorenson consulted with Officer Nunez out of our presence. They came back to our conference room after approximately fifteen minutes. Officer Nunez then told us that he wished to consult with an attorney before answering any questions. The interview was concluded and Officer Nunez was turned over to Internal Affairs Lieutenant R. Palermini.

October 27, 2004 (Wednesday):

In researching the incident history of the incident on July 11, 2004 we determined that the officer called to the assist Officer Nunez on a pedestrian stop at 268 Jackson Street was officer [REDACTED] [REDACTED] was a single officer unit that night, assigned to unit [REDACTED]. Inspector Stuart arranged for [REDACTED] to come to the Inspector Bureau and give an audio taped statement.

At approximately 1745HRS, Inspector Mark Stuart and I interviewed Officer [REDACTED]

[REDACTED] We interviewed him in the inspector conference room. The interview was tape recorded with his knowledge. The following is a summary of that interview:

Officer [REDACTED] current patrol shift is team 5- midnights. We advised [REDACTED] that we were conducting a criminal investigation regarding Officer Nunez and that Internal Affairs may contact him. I advised [REDACTED] of the date and approximate time of the incident under investigation. I told [REDACTED] that the date was July 11, 2004 and the location of the stop was the Kragen auto parts store, located on Jackson Street. We also provided him with a copy of his unit history for that night to help refresh his memory. After reviewing the history he said he remembered the night because it was extremely busy and he remembered Officer Nunez conducting a pedestrian stop (a self-initiated activity) in the middle of all of the action. He said he was very angry about that and that is why he remembered the incident.

Officer [REDACTED] said he did get dispatched to cover Officer Nunez, but when he got to Nunez's location, the person he was contacting had already left. [REDACTED] said Nunez was parked in the back of the parking lot near a dumpster. He said Nunez was backed into the parking lot. [REDACTED] said he asked Nunez why he was "going off" on a pedestrian when the city was so busy. Nunez told [REDACTED] he was backed in trying to write his report when a female pedestrian approached him. He stated, "I had no choice, she came up to my car." [REDACTED] said Nunez told him he had dealt with her earlier that evening and that she was a "loon" from Park Street and was yelling and screaming about something. [REDACTED] did not

remember exactly what Nunez said about the person other than he had contacted her earlier on Park Street.

█████ said he did not remember seeing anyone else around the parking lot or Park Street when he arrived. █████ did not remember which driveway to Kragen Auto he drove into when he arrived to cover Nunez. █████ said Nunez referred to the pedestrian as "she."

█████ said he did not stay in the lot very long. He said once he arrived and saw that Nunez was seated in his car alone and nobody was around, he had a brief conversation with him then left. He did not remember if Nunez drove away at the same time.

I asked █████ if he could recall any previous calls with Officer Nunez where he covered him on stops behind buildings. He said he didn't specifically remember covering him behind buildings, except possibly in the industrial area of town. We specifically told █████ that a female had made allegations against Officer Nunez. The allegation of wrongdoing occurred on the night of the stop behind the Kragen store. Inspector Stuart and I asked █████ if Nunez appeared to be nervous, upset, or was acting strange the night he covered him at the Kragen. █████ said he did not remember Nunez being upset.

Inspector Stuart asked Officer █████ if he remembered how long it took him to get to the Kragen to cover Nunez once he was sent there by radio dispatch. █████ looked at his unit history printout I had provided him and said it took him 3 minutes. █████ said he was sent at 0225HRS and arrived at 0228HRS.

I asked [REDACTED] if he knew of any incidents or contacts, specifically with females, that Nunez had made and he [REDACTED] had covered him and if he observed anything inappropriate by Nunez. [REDACTED] said "No." [REDACTED] described Nunez as a "vanilla kind of guy." He said Nunez was "kind of laid back and average." We asked [REDACTED] if there was anything he has witnessed Nunez do on the streets that he would consider inappropriate police conduct. [REDACTED] said he had not witnessed anything; his only complaint about Nunez would be that he is not active enough. [REDACTED] did state that he and Nunez live in the same city and often commute to work together with Officer [REDACTED] and Officer [REDACTED].

We ended the interview with Officer [REDACTED] at 1820HRS.

Inspector Stuart and I had made arrangements to speak to [REDACTED] on this same evening. [REDACTED] resides at the home where we found VICTIM [REDACTED]. VICTIM described her as being a friend since the time she left her mother's home in May. VICTIM told us that she had confided in [REDACTED] regarding the incident. [REDACTED] agreed to come to the police station for an interview.

At about 1840HRS, Inspector Stuart and I interviewed [REDACTED] at the Hayward Police Department. This interview was memorialized on audiotape only. [REDACTED] lives at [REDACTED] Hayward. She is 33 years old and is an unemployed teacher's aid. [REDACTED] claimed to have worked the "latch key" program at [REDACTED]. [REDACTED] however, she was laid off several months ago when her teaching credential expired. She claimed she has not renewed it and remains unemployed.

██████████ has four children of her own and raised one stepdaughter who is 18 years old and no longer lives with her.

██████████ said she met VICTIM through a mutual friend named ██████████ about five months ago. ██████████ claimed not to know ██████████ last name. ██████████ lived somewhere in San Leandro near ██████████

We showed ██████████ an Alameda County juvenile booking photograph of VICTIM and she positively identified her as the VICTIM she knew. ██████████ said VICTIM told her she was 18 years old and lived in the ██████████ of Hayward. She said VICTIM did stay at her house from time to time, but never for long periods of time. VICTIM helped ██████████ by babysitting her children occasionally. When asked why she hung out with a person whom she thought was 18, ██████████ replied that she did not "hang out" with VICTIM, but mostly had her baby sit for her children. ██████████ denied using any drugs with VICTIM and claimed not to be a drug user. ██████████ said she did not realize VICTIM was under 18 years old until a week ago. She never knew VICTIM was a runaway and said VICTIM would occasionally speak of talking to a sister she referred to as ██████████

We specifically asked ██████████ to explain what VICTIM told her about an incident involving a Hayward police officer. ██████████ said VICTIM told her about the incident approximately 1 to 1 1/2 months ago (possibly in August). She told ██████████ she was at the 7-11 store on Jackson Street one night when an officer stopped her. ██████████ said VICTIM knew the exact date, however, ██████████ could not recall what date it was.

told her to get into the car again. The friend on the phone heard VICTIM talking to the officer and knew the officer was taking VICTIM to the rear of the Kragen Auto store.

██████████ said the friend who was talking to VICTIM on the phone ran up to where the officer and VICTIM were in the back of the parking lot. ██████████ said she thought VICTIM told her she was in the process of undressing when her friends came running up to the officer. ██████████ thought VICTIM might have told her that her breasts were exposed.

In order to clarify exactly what VICTIM told ██████████ about what the officer made her do, I asked ██████████ if VICTIM ever told her that the officer touched her. ██████████ said she could not remember; however, she thought she said something about her breasts and remembered the officer told her to turn around and hold her "ass cheeks" apart for him. Inspector Stuart asked if VICTIM told her about the officer ever doing anything with his flashlight or hands. ██████████ said she thought VICTIM said something about light, but could not remember if it was in regards to car headlights or a flashlight. ██████████ said that VICTIM told her the officer was behind her when she spread her buttocks for him. She did not recall whether VICTIM said her pants were down to her ankles or completely off.

██████████ said she told VICTIM that she needed to report this incident because there could be other victims of this officer. She said VICTIM told her she could not report it and did not want anyone to know. ██████████ said she provided VICTIM the name and telephone number of a lawyer and told her to call him. ██████████ said that one week ago she talked to VICTIM a second time about the incident. VICTIM said she had told her sister what had

happened with the officer. [REDACTED] said she spoke to VICTIM yesterday and the only thing said about the incident was that the police wanted to talk with her [REDACTED] about the incident. She also said she talked to VICTIM's mother yesterday. I asked [REDACTED] if she thought VICTIM was telling the truth about this incident and she said she believes VICTIM. [REDACTED] said that with the exception of VICTIM not being honest about her age and being a runaway, [REDACTED] has not known VICTIM to lie to her.

At approximately 1925HRS the interview was concluded.

November 3, 2004 (Wednesday):

Inspector Stuart and I arranged for [REDACTED] to take a polygraph examination with the California Department of Justice. Polygraph examiner Jeannie Overall came to the Hayward Police Department at 1300HRS. I briefed Ms. Overall on the case and Inspector Stuart went to [REDACTED] to pick up [REDACTED]. [REDACTED] was brought back to the police department and introduced to Ms. Overall. Ms. Overall conducted her examination, which lasted for several hours.

Upon completing the interview/examination, Ms. Overall reported back to Inspector Stuart and me that she was unable to consider [REDACTED] truthful. She said that she showed deception in all of the questions she asked [REDACTED]. Ms. Overall told me that she would prepare a report and submit it to me; however, she said her report would reflect that [REDACTED] was deceptive. (A California Department of Justice report will be filed and forwarded to this case file as to the exact questions asked in the interview.)

Inspector Stuart and I spoke with [REDACTED]. She maintained that she was not lying. She did admit to using methamphetamine the night before and felt that if she told us she would get in trouble. (Controlled substances can have an effect on the polygraph machine.) In reference to her seeing VICTIM's breast completely exposed, she said the question was very specific and the incident occurred very fast. Upon reflecting back, she said she definitely saw her sweatshirt at her shoulder level and her bra exposed. She said she could see the side of the breast, but perhaps not the entire breast exposed (to include the nipple and areola). We asked her if she had spoken with VICTIM about receiving any monetary compensation for her testimony. [REDACTED] was adamant that she was not giving a statement for money or any other financial gain. She said she was trying to get a "dirty cop" off the street.

She also said she was not completely truthful about [REDACTED]. She said his real name was [REDACTED] and he resided on [REDACTED]. She explained that [REDACTED] told her he did not want his name involved in this case and threatened harm to her if she told the police his name. (Through an internal records check we determined him to be [REDACTED] DOB: [REDACTED])

Inspector Stuart and I returned [REDACTED] to her home on [REDACTED] and returned to the Hayward Police Department.

November 17, 2004 (Wednesday):

Inspector Stuart and I met with Sergeant J. [REDACTED] at approximately 0848HRS. We met with her in the inspector conference room. The interview was audibly recorded. We explained to Sergeant [REDACTED] that we had received information through Officer Nunez's attorney that he [Nunez] had spoken about this incident to his supervisor on the night it occurred. Officer Nunez had identified Sergeant [REDACTED] as his supervisor and the person he spoke with after the incident.

Sergeant [REDACTED] said that she remembered an officer came to her and spoke with her regarding a drunken male in the area of Kragen Auto parts. (Sergeant [REDACTED] could not specifically remember if Officer Nunez was the officer who had come to her.)

Sergeant [REDACTED] remembered telling the officer that "it does not pay to be nice" and if a person is drunk he "needs to go to jail." She could not remember if July 10 or July 11 was the date that she spoke with the unnamed officer; however, in looking at her unit history that we provided her, she recalled making a pedestrian stop at 0339HRS in the area of Jackson Street and Sycamore on an intoxicated male.

We asked Sergeant [REDACTED] what her normal protocol would be if an officer came to her in regards to a citizen complaint involving any sexual allegations, such as a woman's bra being removed. Sergeant [REDACTED] said she would definitely have followed up and

November 5, 2004 (Friday):

At approximately 1000HRS I went to the Alameda County District Attorney's Office, Hayward branch. I met with Deputy District Attorney Kevin Murphy and Deputy District Attorney Steve Dalporto. Also present at the meeting were Lieutenant Reid Lindblom and Sergeant Mark Mosier of the Hayward Police Department.

I briefed Mr. Murphy and Mr. Dalporto on the investigation and what our agency had done to this point. Mr. Murphy determined that his unit (sexual assault team) would be handling the prosecution of the suspected officer. He advised me to meet with his inspector, Greg Hughes, in order to apprise him of the investigation and begin to turn investigative control over to the district attorney's office.

November 16, 2004 (Tuesday):

At approximately 1349HRS I spoke with attorney Kathryn Rains of Rains, Lucia & Wilkinson LLP. Ms. Rains stated that she was representing Officer Jose Nunez. I explained to Ms. Rains that Inspector Stuart and I were conducting the criminal investigation and gave her a brief summary of the allegations against Nunez. She asked me if this was in regards to a stop by Kragen Auto. I told her it was. Ms. Rains told me that in speaking to her client initially, he told her that he had reported this incident to his immediate supervisor, Sergeant [REDACTED] on the night of the occurrence. He stated that he had contacted her using the MDT (mobile data terminal) in the police car and

arranged to meet with her out in the field. Nunez said he had a face-to-face conversation with Sergeant [REDACTED] and explained what had transpired.

I asked her if her client would be willing to come in and provide a statement to us. She told me that she would speak to her client and call me back if he decided to give a statement.

Inspector Torres and I attempted to contact Sergeant [REDACTED]. She was on her regular day off, so I called her at her residence. I left a message on her home answering machine. Inspector Torres paged her on her departmentally issued pager three times. She did not call back. At approximately 1530HRS I was able to get a message to her through Sergeant Art Wydler. Sergeant [REDACTED] told Sergeant Wydler to tell me that she would be available to make a statement to me on Wednesday, November 17, after 0600HRS, when she came back on duty.

At approximately 1600HRS I met with Inspector Greg Hughes of the Alameda County District Attorney's Office. We met at the Hayward Police Department. I verbally apprised him of the case and physically took him to the crime scene in order to walk him through the incident. I then took him to [REDACTED] and introduced him to [REDACTED]. [REDACTED] Inspector Hughes made arrangements to speak to [REDACTED] at a later time.

Inspector Hughes took responsibility for attempting to locate [REDACTED] friend, [REDACTED] and attempt to interview him as another possible witness to the incident.

asked more questions. In addition, she said she would have documented the incident in the form of a supervisors log. We ended the interview with Sergeant [REDACTED]

I spoke with Ms. Rains at approximately 0900HRS. Ms. Rains told me that Officer Nunez was willing to provide a statement with her [his attorney] present. We arranged to meet at Ms. Rains's office, located at 11501 Dublin Boulevard, Dublin, CA, at 1330HRS.

Inspector Stuart and I went to the law offices at 1330HRS. We met with Kathryn Rains and Jose Nunez in a conference room. I recorded the interview on an audiocassette. Ms. Rains also recorded the interview on a microcassette.

The interview commenced at 1345HRS. Present in the interview were Kathryn Rains, Jose Nunez, Mark Stuart and me. Inspector Stuart started the interview by reading Nunez his rights as per the Miranda decision. Inspector Stuart read the rights from the pre-printed Hayward Police form. Nunez stated that he understood his rights and stated he would speak with us in the presence of counsel.

We asked Nunez to explain his actions on the morning of July 11, 2004, just after midnight. Nunez stated that he remembered the evening and said that he recalled the pedestrian contact at the 7-11 store, located at 399 Jackson Street. His initial statement was that he contacted the female on the sidewalk in front of the 7-11 store. He said that he contacted her as a possible witness to a robbery that had just occurred down the street

from where she was standing. He stated the stop lasted only two to three minutes. He said he never obtained the female's name or birth date.

Upon confronting Nunez with the facts from our case and asked him to explain the discrepancies, he was unable to do so. His statement regarding the second contact with the subject was also very different from the statements provided by the victim and witnesses and by police records.

The interview continued until 1547HRS when Ms. Rains asked to stop the interview. She took her client out of the room. Ms. Rains returned at 1634HRS and stated that her client had decided to end the interview and would not be returning to the conference room. I provided Ms. Rains with the name of the deputy district attorney assigned to the case (Kevin Murphy) and left her with my business card. Inspector Stuart and I left Dublin at approximately 1715HRS and returned to the Hayward Police Department.

The entire interview was recorded on audiocassette. A copy of the tape was provided to the Office of Ethical Standards. They were tasked with the responsibility of having the tape transcribed. A copy of that transcription will be attached to this report.

At approximately 1755HRS Inspector Stuart and I re-contacted Sergeant [REDACTED] at the Hayward Police Department. This conversation was also audibly recorded. We told Sergeant [REDACTED] that we had spoken with Officer Nunez and during the interview he stated that he had told her [REDACTED] about the incident in question. He stated that he

had met with Sergeant [REDACTED] in the parking lot of Chabot College several hours after the incident.

Sergeant [REDACTED] had no recollection of meeting with Officer Nunez nor did she recall being in the Chabot College parking lot. We again asked her if he could recall at any time during the time in which she supervised Officer Nunez had he ever mentioned a pedestrian stop involving a female. Sergeant [REDACTED] was sure that Nunez had never told her about an incident involving a female subject. The interview was again concluded.

November 18, 2004 (Friday):

At approximately 1315HRS I met with VICTIM in front of the Olive Garden restaurant located at 24688 Hesperian Boulevard. I was with Inspector Greg Hughes and Inspector Bill Cooper of the Alameda County District Attorney's Office. I introduced VICTIM to Inspector Hughes and Inspector Cooper. They made arrangements to meet with VICTIM at a future date in order to re-interview her regarding this case.

During the course of discussion VICTIM said that she wanted to add something to her statement that she had initially left out. She said that when the officer originally stopped her she had a small pocket scale and a glass smoking pipe on her person. When the officer conducted his first pat search he found the items. She said the officer took the two items and subsequently handcuffed her. She stated that she left this out of her first statement because she was afraid she was going to get into trouble for having drug

paraphernalia on her person. After the incident, Officer Nunez took the glass pipe and threw it on the ground. He told VICTIM to step on the pipe and crush it, which she did. He told her that he was not going to take her to jail. VICTIM said she thought the scale was still in his vehicle when she left.

We ended our meeting with VICTIM and I returned to the Hayward Police Department.

November 30, 2004 (Tuesday)

Inspector Stuart provided me with copies of the Metro PCS billing statement for telephone number [REDACTED]. This is the telephone that VICTIM claimed to be in possession of during the incident.

In reviewing the billing history for July 11, 2004, I found that a call was placed to [REDACTED] at 0219HRS. The call lasted for 5 minutes and 43 seconds. (This is the home telephone number of [REDACTED]) At 0230HRS a call from the [REDACTED] home came into the cellular telephone. The call lasted for 2 minutes and 20 seconds. This information corroborates both VICTIM's statement as well as [REDACTED] statement that they were talking to one another just prior to and during the incident.

CASE FOLLOW-UP:

There are several interviews of witnesses that still need to be conducted. In meeting with the district attorney's office, it was decided that the district attorney inspectors would handle the investigation of the case from this point forward. All pertinent information

will be given to Inspector Greg Hughes and Inspector Bill Cooper. Please refer to their supplemental reports for further details.

CASE STATUS:

Cleared- to district attorney for review and charging.

Defendant's Name: JOSE NUNEZ

PFN: _____

CEN: _____

HPD REPORT #: 2004-31278

DECLARATION IN SUPPORT OF PROBABLE CAUSE

THE UNDERSIGNED HEREBY DECLARES:

1. That he/she is a PEACE OFFICER of the CITY OF HAYWARD, California.
2. That the contents of this declaration provides probable cause to believe the above-named defendant committed the following offenses:

a.) 236 PC

c.) _____

b.) _____

d.) _____

3. I declare under information and belief that the foregoing is true and correct:

On July 11, 2004 at approximately 0110HRs, Jose Nunez made contact with a female juvenile. Nunez was working as a uniformed Hayward police officer. Nunez placed the victim in handcuffs, against her will, and transported her to another location. The detention was unrelated to any police investigation.

Several hours later, Nunez made contact with the same female juvenile on the street. Nunez placed her in the caged unit of his marked police vehicle, again against her will, and transported her to another location.

Dated: December 14, 2004 at Hayward, California

[Signature] #213
Officer's Signature

STEVEN SCHWARTZ
Officer's Name

CERTIFICATE OF PROBABLE CAUSE

The Court, upon the review of this declaration, hereby

____ Finds

____ Does not Find

good cause to detain the above-named individual.

Date: _____

Time: _____

Magistrate of the Superior Court

SUPERIOR COURT OF CALIFORNIA
County Of Alameda



COURT ORDER

♦ SUBSCRIBER, BILLING, CREDIT AND TOLL RECORD SEARCH ♦

TO METRO PCS INC, a telephone corporation:
Compliance – Case Number 2004-31278

No. _____ Subpoena

Hayward Police Department, Police Inspector Steve Schwartz, Badge Number 213 (herein after referred to as "affiant") is currently conducting an investigation where the information ordered disclosed herein is relevant to an ongoing criminal investigation; the criminal offense under investigation is Kidnapping for gain or to commit robbery, rape, spousal rape, oral copulation, sodomy, or sexual penetration, Penal Code section 209(b)1, and the person(s) who is/are the subject of this investigation is/are [REDACTED] and that Metro PCS Inc, a telephone corporation as defined in Public Utilities Code, section 234, has received notice that this order was being sought. It is hereby ordered that Metro PCS Inc, through its officers, employees and agents take the following action:

Provide to the Hayward Police Department, Police Inspector Steve Schwartz, the following

SUBSCRIBER, BILLING, CREDIT, TOLL RECORDS, and CALL DETAIL INFORMATION (CELL SITE and ADDRESS LOCATIONS) for the monthly billing period that covers from July 1, 2004 through to July 30, 2004 for the telephone number listed below:

[REDACTED]

ADDITIONAL ORDERS: It is also ordered as follows:

Release of Information: Metro PCS, Inc. shall furnish affiant with all information gathered pursuant to this order in a reasonable time (five business days) while this order is in effect.

Compensation: Affiant's employing law enforcement agency shall compensate and/or reimburse Metro PCS, Inc for all reasonable charges and expenses incurred in complying with this order.

Non-disclosure: Having determined that there is probable cause to believe that the disclosure of the existence or execution of this order would impede a criminal investigation, it is ordered that Metro PCS Inc., it's officers, employees and agents not disclose to any person any information regarding the existence or execution of this order, or any information obtained pursuant to this order, unless ordered to do so by this Court, as such disclosure would impede the investigation.

JURISDICTION: This court has jurisdiction to issue this order pursuant to 18 USCS ss 3121 *et seq.* California Penal Code ss 1523 *et seq.* California Code of Civil Procedure ss 128, 187 and United States v. New York Telephone company (1977) 434 US 159.

Wherefore, your affiant believes that the listed phone records are relevant to this ongoing, criminal investigation and therefore requests that a Court Order be issued for the listed telephone records and are currently located at Metro PCS Inc.

Wherefore, affiant declares under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

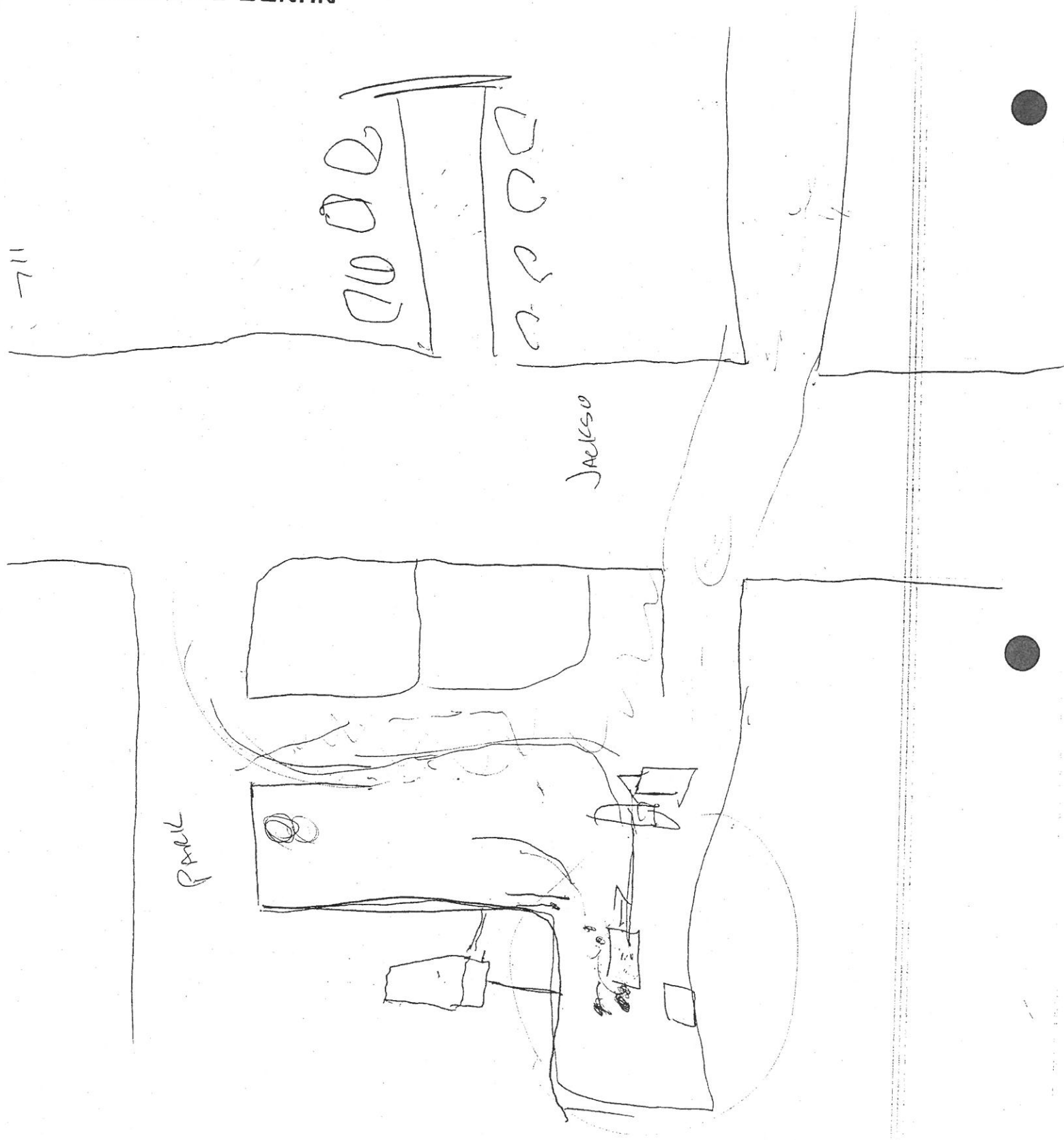
Subscribed and sworn to before me on

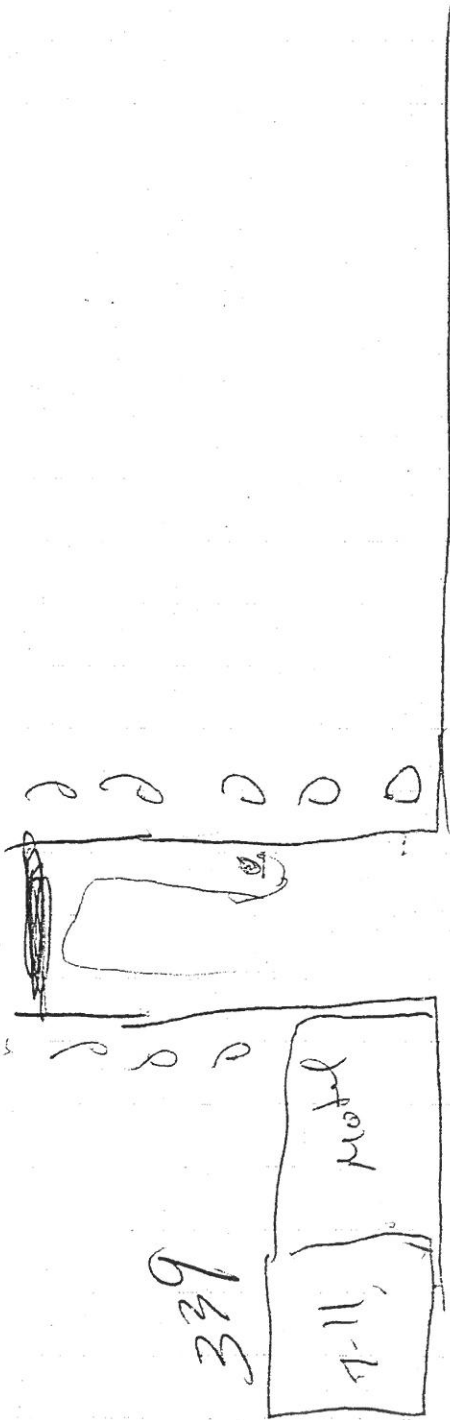
Time of issuance: 9:10 AM

Judge of the Superior Court: Peggy Flora

Dated: 11-18-04

Signature of Affiant: [Signature]





Jackson



REPORT NO. 2004-

HAYWARD POLICE DEPARTMENT - HAYWARD, CA

ADMONITION

[Signature]
Name of person admonished

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him/her present while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one.

WAIVER

1. Do you understand each of these rights I have explained to you?

yes

2. Having these rights in mind, do you wish to talk to us now?

yes

[Signature]
SIGNATURE OF OFFICER

211
BADGE NO.

11-17-04
DATE AND TIME

ADMONITION AND WAIVER

HAYWARD POLICE DEPARTMENT

PART I

INSTRUCTIONS:

The following admonition should be given by the Police Officer at the time that there is any restraint of freedom imposed upon an individual suspected of committing a crime and prior to any questions:

ADMONITION

I want to advise you:

1. You have the right to remain silent;
2. Anything you say can and will be used against you in a court of law;
3. You have the right to talk to a lawyer and have him/her present while you are being questioned, and
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one.

PART II

WAIVER

INSTRUCTIONS:

Ask the following questions prior to questioning any suspect. Record all answers verbatim:

1. Do you understand each of these rights I have explained to you?

Yes I do

2. Having these rights in mind, do you wish to talk to us now?

No

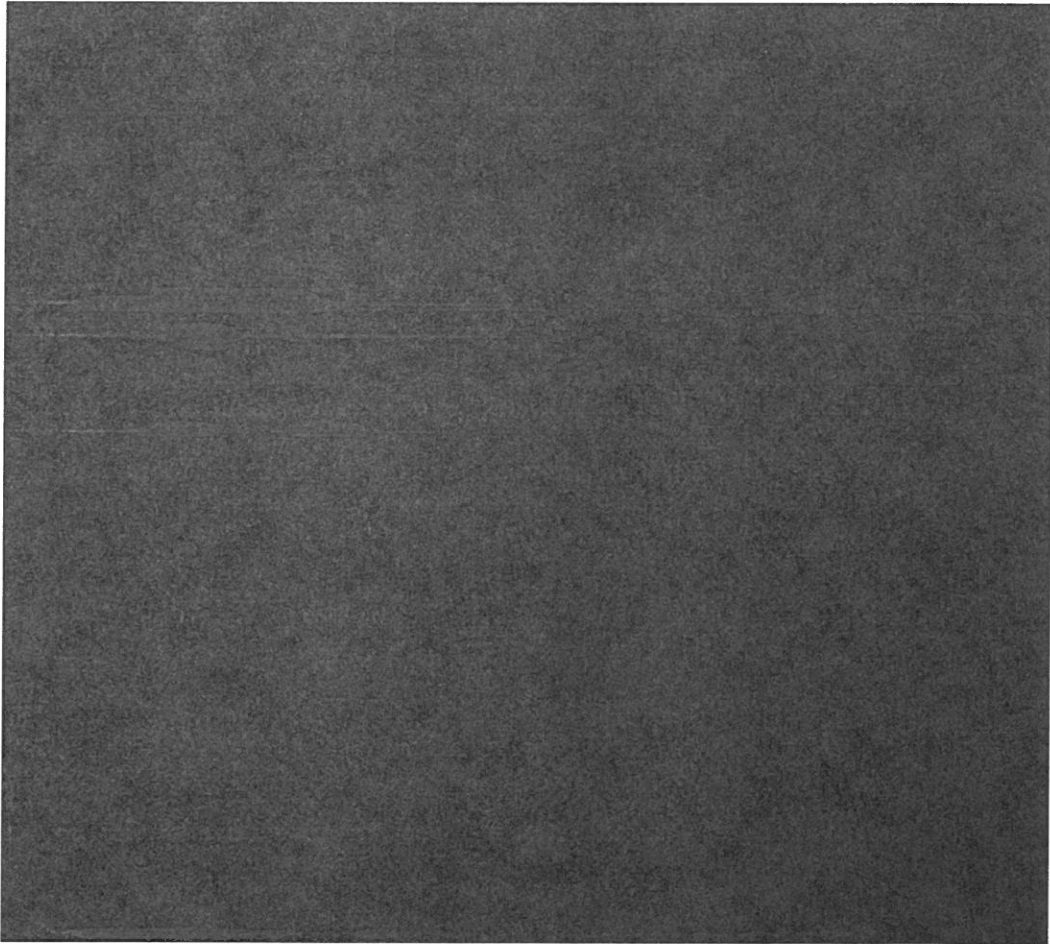
NAME OF PERSON ADMONISHED

SIGNATURE OF OFFICER

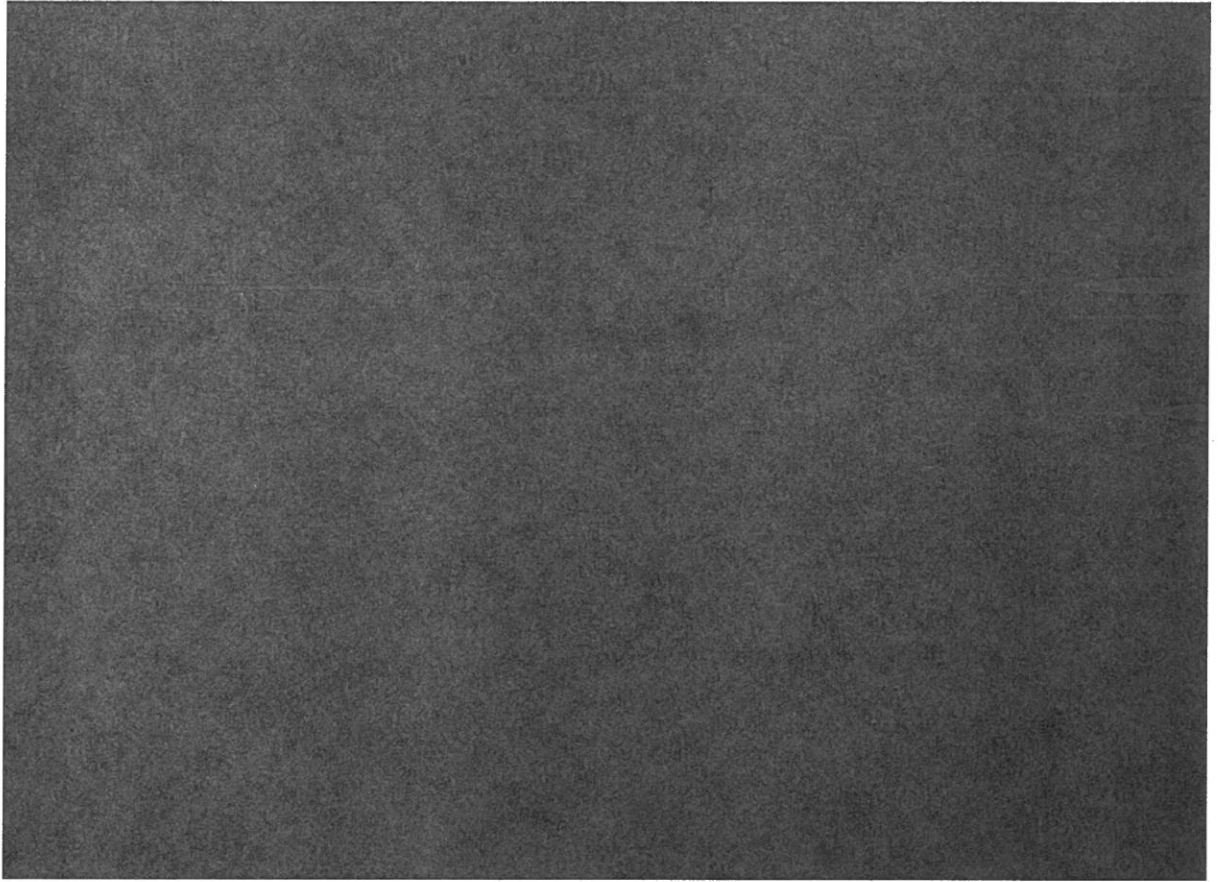
BADGE NO.

DATE AND TIME

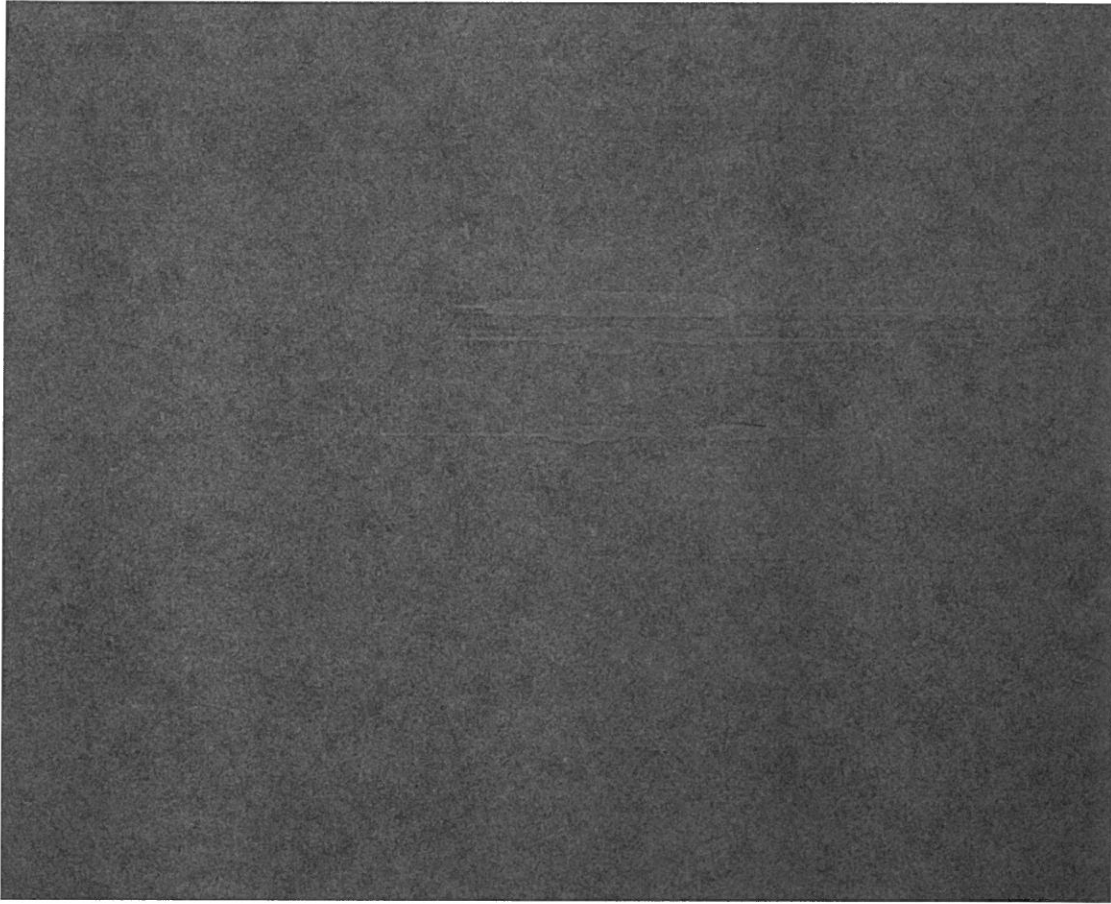
REPORT NO.



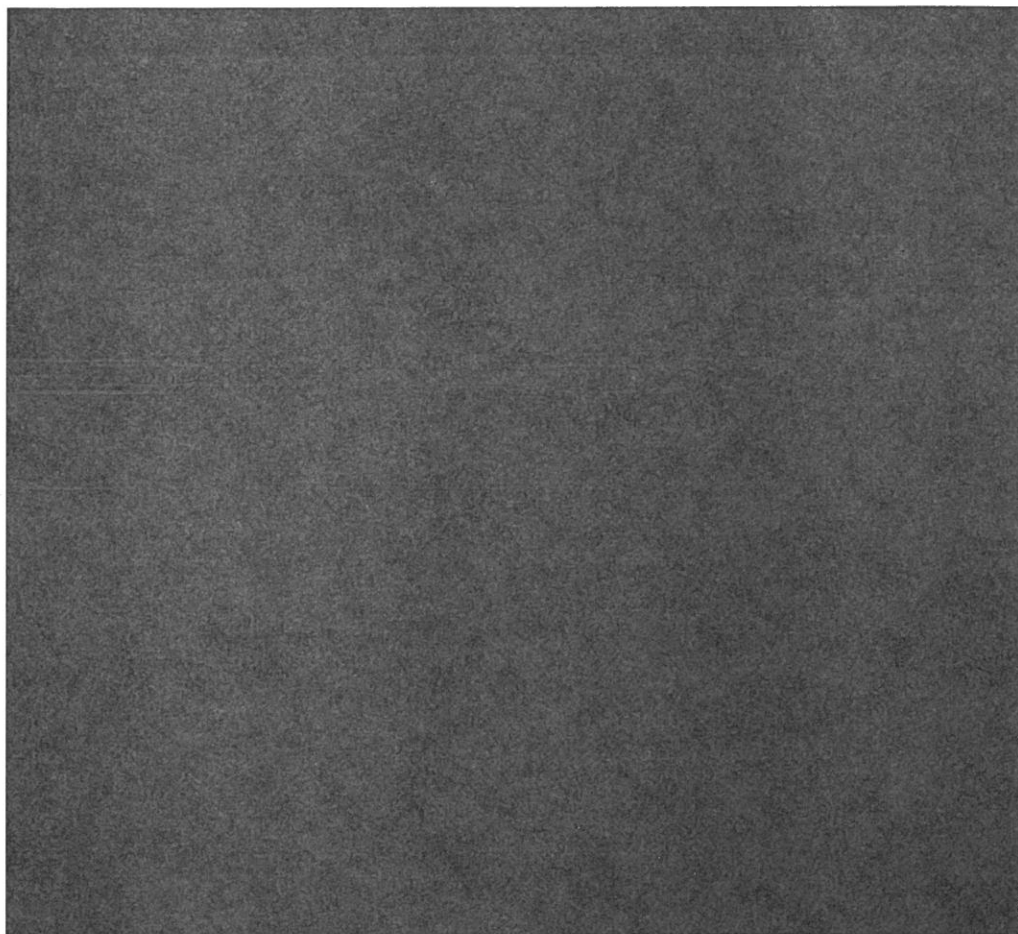
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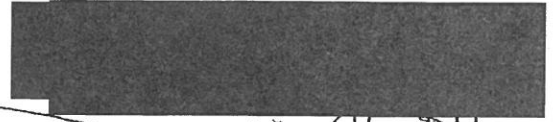


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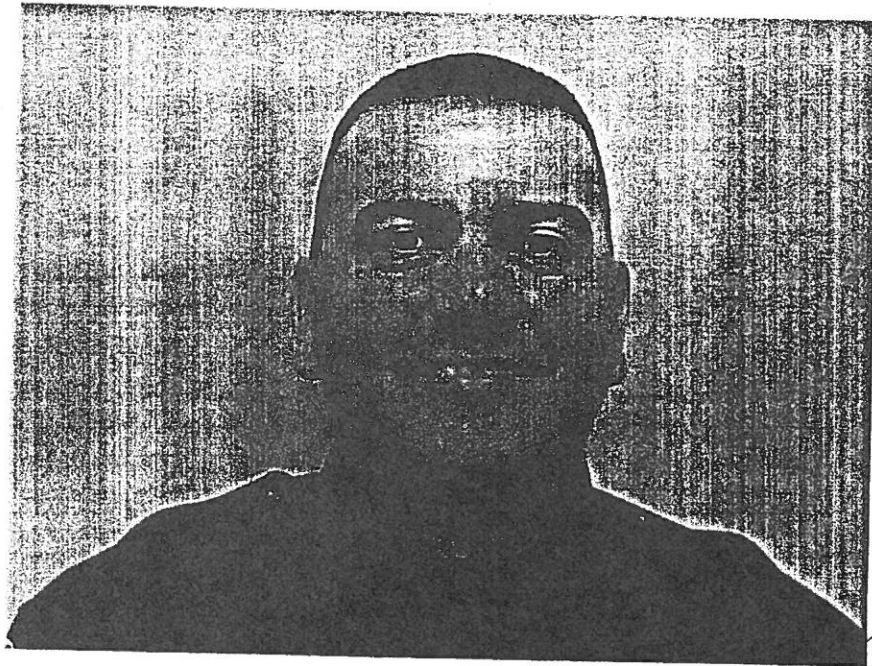


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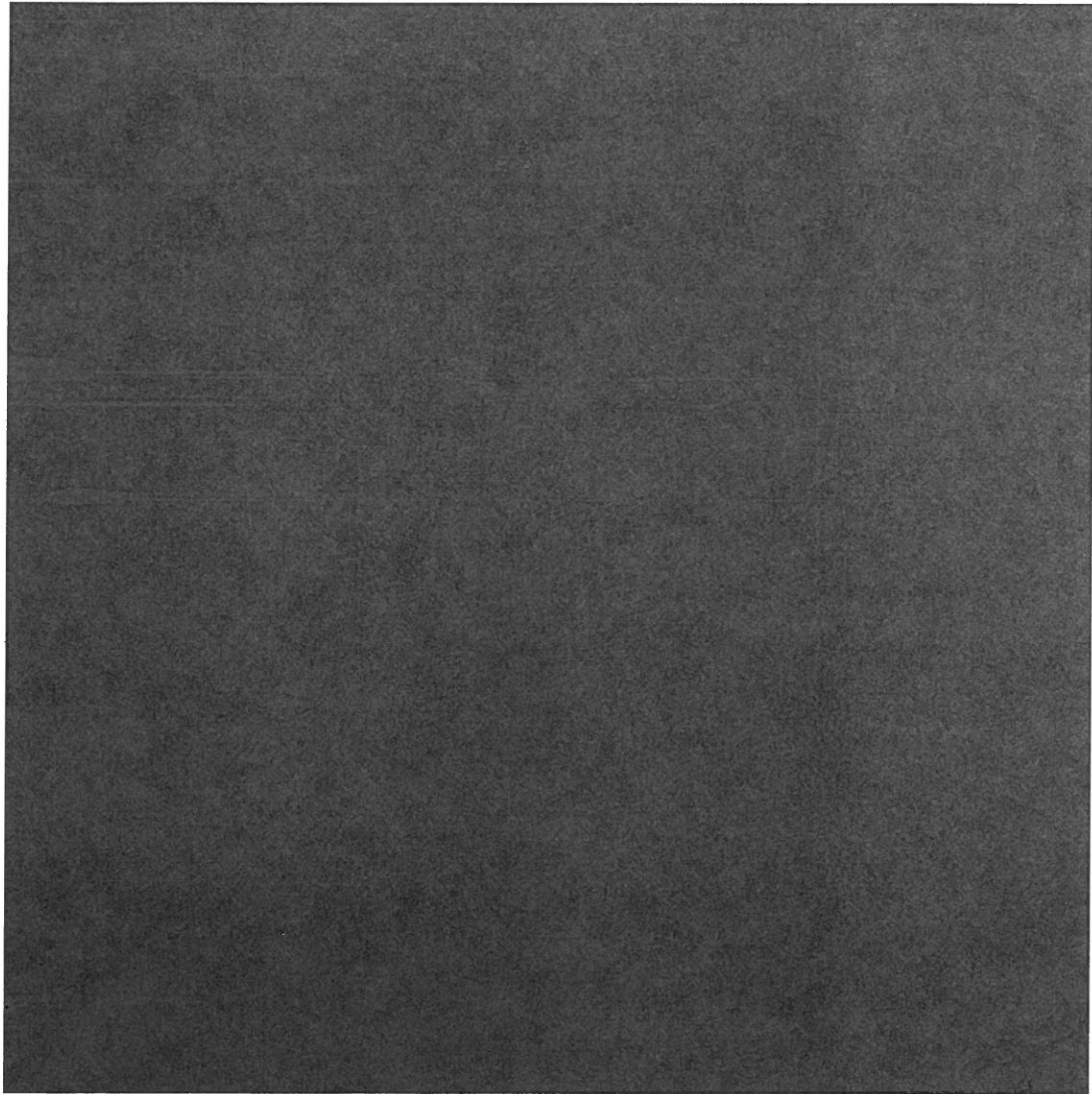
I believe this is the officer
in our conversation - J. Nunez



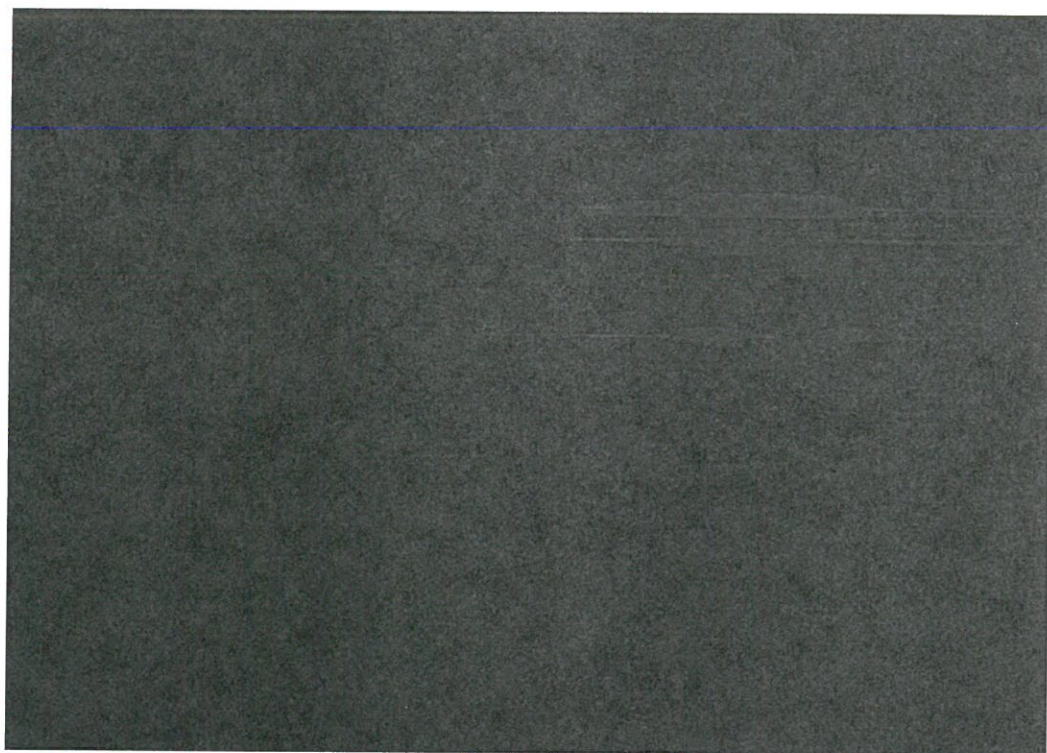
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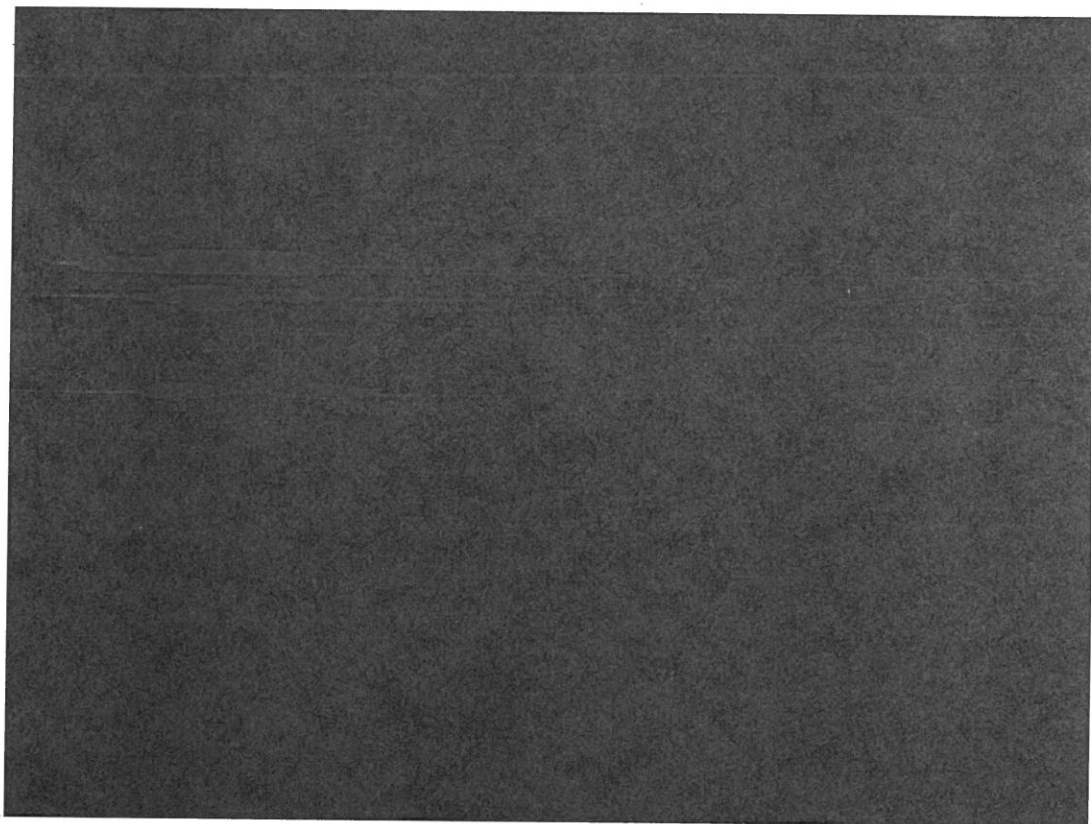
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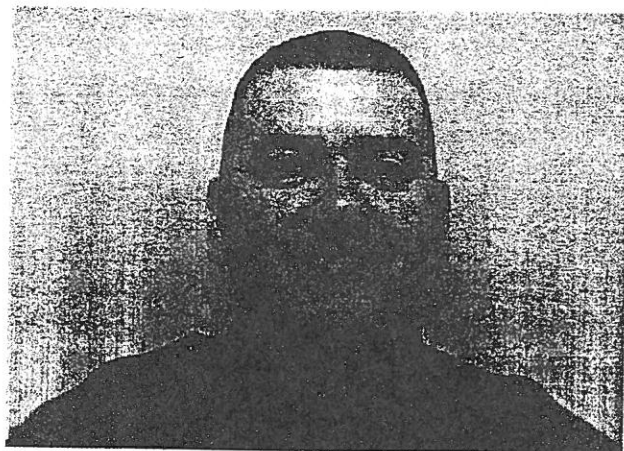
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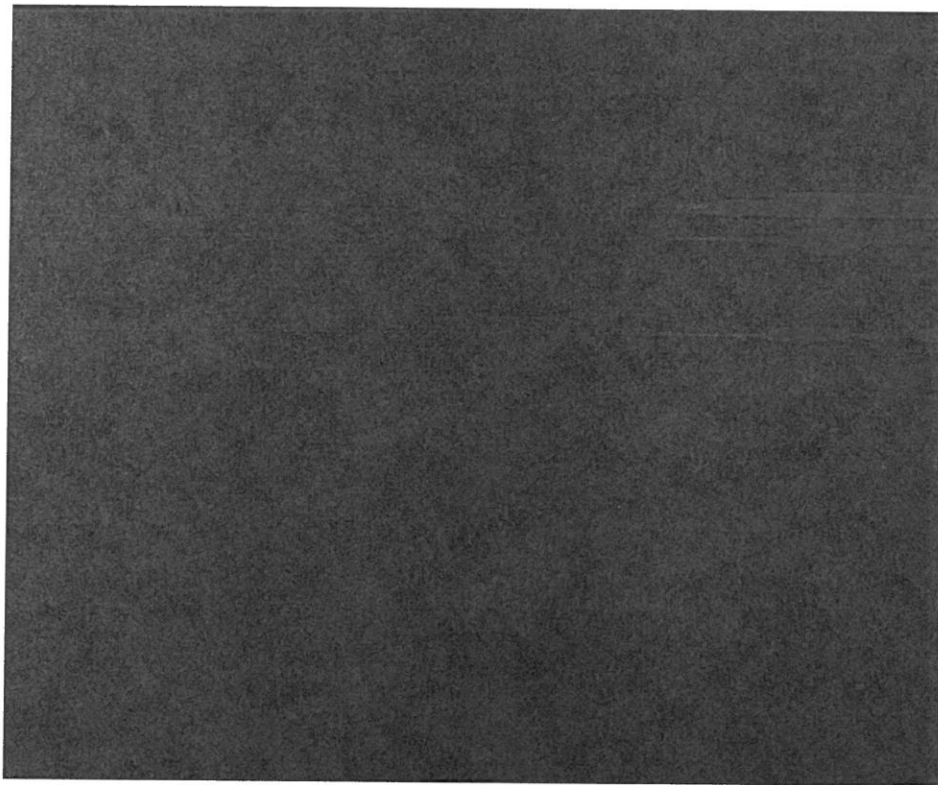


This is J. Nunery

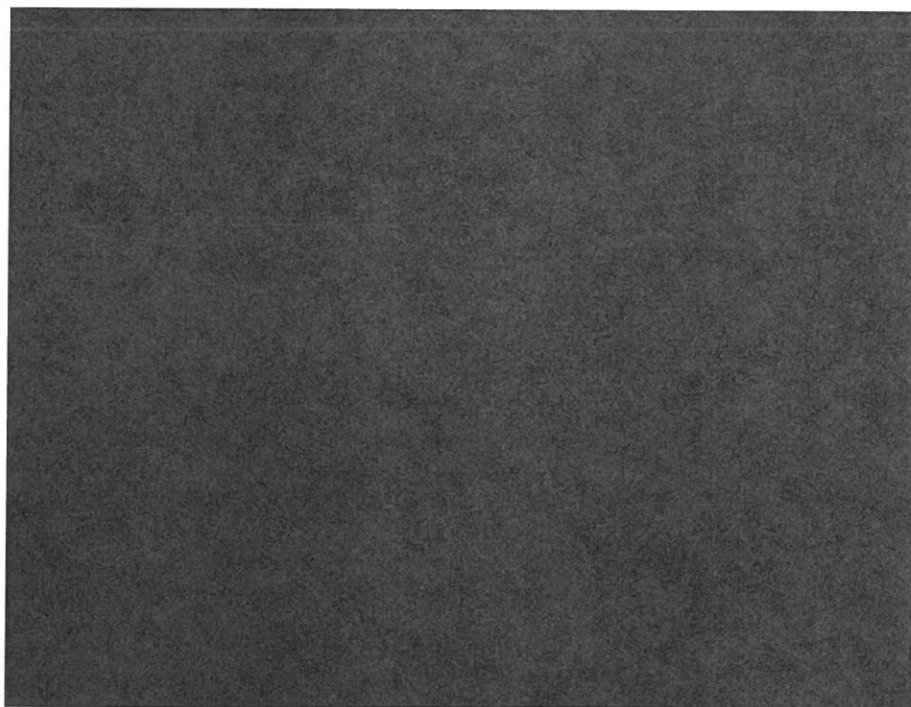
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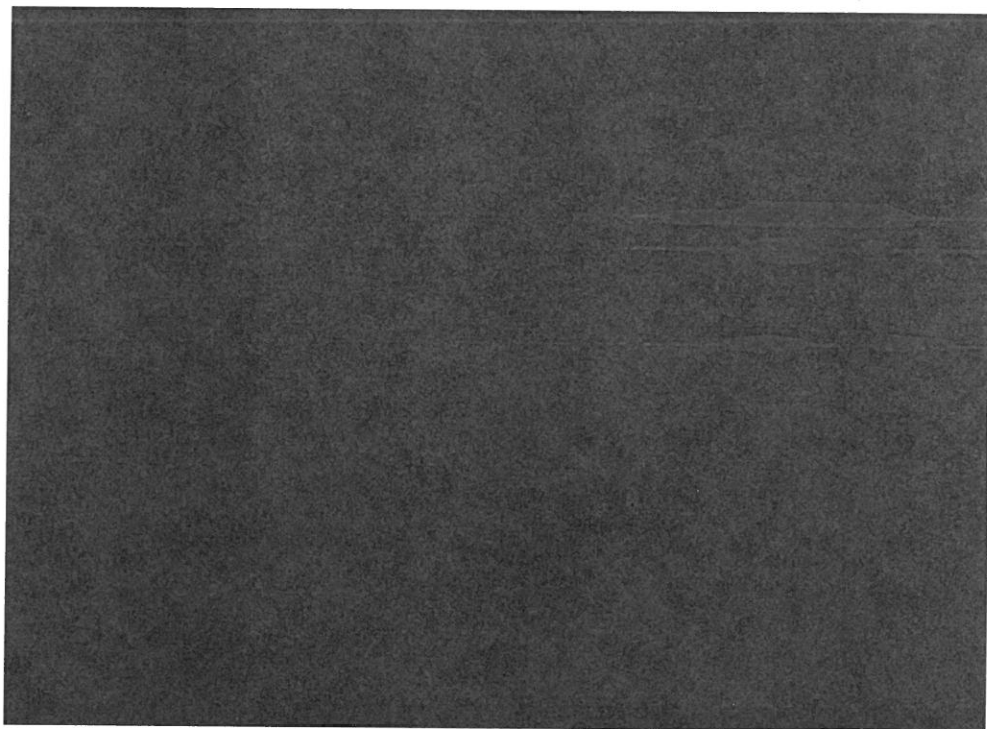
October 26 2004
2:00 am



4



5



6

TAPE ONE – SIDE A

... 2004, at approximately 1:45 p.m. My name is Inspector Steve Schwartz with the Hayward Police Department. I'm with my partner, Inspector Mark Stuart. Um, we are at the Law Offices of Rains, Lucia & Wilkenson in Dublin. Um, present are:

JN: Jose Nunez.

SS: Okay.

KR: And Kathy Rains, R-A-I-N-S.

SS: Okay. Uh...

MS: Mark Stuart. I'm going to advise you of your rights here. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer, have him or her present while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one. Do you understand each of these rights that I have explained to you?

JN: Yes, I do.

MS: And, having these rights in mind, do you wish to talk to us now and answer questions?

JN: Yes.

MS: Okay, do me a favor and just go ahead and sign the top up there that you, uh, I advised you of your rights, that you waived, and you were willing to speak to us.

SS: Okay, this incident, the reason that we are investigating this incident, so you understand, we'll tell you again. We're investigating from a criminal standpoint. We're not doing the internal affairs investigation. We were called in to do the criminal portion of this. Um, what we have, or the information that we have is that there was a stop that was conducted on July 10th, the night of the 10th into the morning of the 11th. July 10th was a Saturday night, and the 11th obviously being a Sunday morning, into the early morning hours. We received a complaint from a female who stated that she identified you as being the person that was involved in this incident that happened on Jackson Street around the Kragen/7-11 area – Jackson & Sycamore, Jackson & Park Street. That's what, that's the case that we're looking at right now. I think, talking to your attorney earlier today and yesterday, that you're familiar with the stop and that it seems to be that we're talking about the same situation. Um, what we would like to do is we would like to get, um, your side of what happened on that stop, you, you do remember, and the things that you remember about it. Um, and then we would like to go back and maybe ask you some specific questions, again if you're up to it, um, about that particular

stop. Um, because there are some allegations made that there was possibly some misconduct, uh, possibly criminal misconduct on your part toward the individual that you contacted.

JN: Okay.

SS: Okay. Does that, does that make sense; are you recalling the particular stop?

JN: I am recalling the particular stop, but I don't recall the actual times.

SS: Okay. Um, let's start out with you were working Patrol that night, correct? ...back in July, you were on duty?

JN: Correct.

SS: And you were assigned to Patrol Division?

JN: I believe so.

SS: Okay. Um...

MS: Have you been assigned to anything else but Patrol since you've been here?

JN: Yes, I've been assigned to, uh, Spanish translator, which is basically in Patrol, but, uh...

MS: But not...have you worked with SDU, or any of the other special units?

JN: I've worked as a Zebra car, which is basically an SDU unit. I've done that as well.

MS: Okay. Do you recall that night if you were a Zebra car, or if you were assigned to a beat?

JN: I don't believe I was.

MS: Okay.

SS: Did we show you...

MS: I'll tell you what, without showing him, I'll just...From your unit history, you were designated as a Charles beat.

JN: Okay. Okay. All right.

SS: Would that...make sense?

JN: That would make sense. It would make sense.

SS: Is that something that, since you had been, um, I think you had been working that shift, if I'm not mistaken, since July, correct?

JN: Uh, I've been assigned to the Charles beat. I haven't always been the Charles beat.

SS: Okay.

JN: Um, it just depends on, you know, manpower.

SS: So, on that particular, if we said you were probably a Charles car, it was...

JN: If I signed on to Charles beat, I was in Charles beat.

SS: Okay. Um, do you recall a particular incident that occurred on or near Jackson Street at or about Park Street and/or Sycamore Avenue where the 7-11, Arco, I believe is the gas station, and then on the other side is a, uh, Chinese Buffet restaurant, and then across the street from that is a Kragen Auto Parts?

JN: Yes.

SS: Okay. Do you recall having a, uh, a contact with a female on a particular, again, we're telling you it's July 10th to the morning of the 11th, but um in that, in the time frame of July...do you recall having a contact in that area?

JN: Yes.

SS: Okay. Could you tell us how the contact was initiated, and maybe what transpired in your words, please?

JN: Um, the first time, or the second time?

KR: You back up and give him the whole...unintelligible...you contacted him twice.

SS: Yea, just start, just start from...whole thing.

JN: I actually contacted this person twice.

SS: Okay.

JN: Sounds like this is the person that we're talking about, uh, there was, I believe, a 211 that came out. Uh, I wasn't sure exactly if there was a 211 at 7-11 or from that day. I was one of the officers that responded to go and assist on the 211. Um, I'm not quite

sure who was the actual primary officer, uh, he went off saying that he was off with a possible subject and off the radio.

SS: I'm sorry, that was on, on the police radio?

JN: On the police radio. And, um, I remember still en route to go and cover him. Uh, by that time there was already I think two or three officers that got there before I did. Uh, as I was approaching going up Jackson, I seen, uh, a female on a phone near the vicinity. Uh, I figured she might be a witness, or she was a victim, I don't know. So I stopped on Jackson.

SS: Did you see, when you said you were coming down...

JN: I was going Eastbound.

SS: Eastbound on Jackson from ...

JN: I want to say I was coming, I couldn't even recall...

SS: But somewhere down towards, I mean, from the freeway area coming Eastbound?

JN: Yea, from the freeway area. I don't know, I could have been coming from the station.

SS: Okay.

JN: Or I could have been coming from I don't know...

SS: Okay.

JN: But somewhere there. I was going up there, and I remember stopping and to see if this person was a witness or was it a victim, or were they talking to Dispatch or not. Um, as I stopped, I asked her, you know, how long she was standing there or in that area.

MS: Let me stop you, real quick, I think you said she was on a phone.

JN: She was on a cell phone.

MS: Okay. Standing on her own personal cell phone, not on a pay phone?

JN: No.

MS: Okay. And where exactly was that?

JN: I couldn't tell you, I mean, I know it's on Jackson. I want to say near 7-11.

MS: Okay.

JN: Um, I'm not quite sure, um. But I remember stopping her and asking her if she had seen anybody running or if she witnessed anything. Um...

SS: So just so I'm clear, I'm sorry to interrupt you, but you say you're going east so she's on this...

JN: I want to say she's on the South side.

SS: 'Cause the 7-11, if you recall, is on the South side.

JN: Right.

SS: And then there's a Discovery, Discovery Inn Motel just west of that.

JN: Right.

SS: So, is that the same area we're talking about?

JN: I think that's the same area.

SS: Okay. Okay.

JN: ... that's the same area.

SS: Okay.

JN: And then, I remember stopping and asking her, um, like I said, how long was she there, did she witness anything, did she see anything. Um, she, I, I can't recall what she was saying, but I don't think she...I, I can't recall what she was saying. Um, obviously I was only contacting her to see if she saw anything. Um, right at that time, um, the primary officer gets on the radio and says that the 211 is unfounded, and I believe he was getting a 5150 number or something like that. Um, at that point, you know, I, there's no crime...unintelligible...okay, I told her, you know, hey, where do you stay, or where you at? She said, "I'm around the corner." I said, "Okay, fine." I go and told her, you know, it's not safe out here, you should probably stay in there instead of hanging out here on the street. That's it, um, she...

MS: Did, I'm sorry, did she give you an address for where she stays?

JN: No. She just said around the corner or down the street somewhere...unintelligible...

MS: Any particular street that she said, that you recall?

JN: No. Not that I recall. Again, I wasn't there to, you know, FI her or anything. I just wanted to see if she was a witness to anything.

MS: Can you describe her for us?

JN: Um, from what I remember, I just remember her having dark hair and having a silver phone at that first contact. That, that's, that's it. That's all I remember.

MS: How old do you think she was, about?

JN: I want say she was in her 20's, early 20's, about 20, 21, 22, somewhere in there.

MS: Do you remember anything what she was wearing?

JN: At that point, no, I don't recall what she was wearing.

MS: At any time that you had contact with her that night, do you recall what she was wearing?

JN: Uh, the second time, I, I recall that she had on a black hooded sweatshirt.

SS: What, uh, race did you say she was over there? White, Black, Hispanic, other?

JN: I, I'm, because of the dark hair, I want to say pointing towards, uh, maybe Hispanic.

SS: Okay.

JN: Uh, she may be, uh, she may be White. I really, like I said, I don't really remember...

SS: Okay.

JN: ...what race she is. I don't even know what her name is.

MS: Did you, uh, run a check on her? Did she give you a name, did you write anything down?

JN: No, at this point, 'cause she's, the 211 was unfounded, um, I, no I didn't get her name or anything. So I just cut her loose at that point the first time.

MS: Okay. How long do you think you had the contact with her that first time, how long did it last?

JN: The first time? Two and a half, three minutes?

MS: So, real quick?

JN: It was real quick.

SS: Uh, normal protocol would usually be that you'd, if you had the time, you'd write an FI, field interview card, something like you said you didn't at this time...

JN: I didn't do it because of the primary officer said there was, that it was unfounded, the 211 was unfounded. So, I'm not going to waste my time in getting a, uh, her name and stuff. Like I said, my whole contact with her the first time was to see if she was a witness.

SS: Okay.

JN: That's it.

SS: Um, do you remember asking for ID or anything, that she at least showed you some identification, or...?

JN: Not the first time, I don't remember.

SS: Okay.

JN: I really don't recall I ever had, asking her for her ID or anything.

MS: I'm sorry, and you said that the, uh, the 211 call turned out to be a 5150? Is that what it was?

JN: I believe that's what it was. I mean, you can check the, the history.

MS: Okay.

JN: Uh, for that day. I think it turned out to be a 5150, or something.

MS: Did you, did you ever make it to the scene of that particular call?

JN: No, I did not.

MS: Okay.

JN: 'Cause...unintelligible...once he unfounded it, I, he already had units there with him, I just, you know, came off, came off.

SS: Do you remember who that unit was by any chance, the officer?

JN: Well the only other...the Charles beat is usually doubled. Um, there's usually two people in the Charles beat when there's enough people on patrol. Um, the only other person that I know that was Charles beat would be Officer [REDACTED]. And, I wasn't sure if he was the primary officer on that one, or if it was, maybe it, uh, I'm, I'm can't say it was the swing shift, 'cause swing shift, you know, they usually stop writing paper at 9:00.

SS: Did it come out as a, as a three beeper call? Do you remember it being like a 211, uh, emergency with a...

JN: Right. I, I want to say, "Yes." I think it was, 'cause if it was 7-11 that actually where it occurred, uh, 7-11 always hits their panic button.

SS: Okay.

JN: The one on Jackson, always, even if it's just a simple 44 grab and run, they always hit their, their robbing panic button.

SS: Okay.

JN: And which would result in them doing a three beep early, or something.

SS: Okay.

JN: I'm not sure, if that, if it was...

SS: Had you seen this female before? Do you recognize her? I mean, you worked the Charles beat for some time before that. Had you recognized seeing her out there before? Had you had contact with her before?

JN: No, that's the first time I ever, ever seen her there, first time.

SS: Okay. You said first time you ever seen her there, but had you ...

JN: No, no first time I ever seen her, period.

SS: ...first time you ever dealt with her?

JN: Yea.

SS: Okay, so the stop lasted in your estimation two to two and one half minutes?

JN: Two to three, yea.

SS: Two to three?

JN: Two and a half to three, I'm sorry, two and a half to three.

SS: Okay. And then you did not run her on the radio or on your, uh, MDT?

JN: I don't think I did...unintelligible...I don't even remember asking her for her ID.

SS: Okay.

MS: Did, um, you ask her name. You don't recall a name, if she gave you a name, an age?

JN: If I draw a picture, I couldn't even remember what she looked like.

MS: Okay. You were off there two and a half, three minutes, do you remember what you did once you cleared from there?

JN: From once, once I realized it wasn't a 211, or they unfounded a 211, I just talked to her briefly, telling her, you know, maybe you should go inside where it's safe. The reason why we're out her was because there was a call of a, of a, of a crime. And that's it. Then I got in the care and I took off. I don't even remember where I took off to.

SS: Did she appear intoxicated, under the influence?

JN: Um, I wasn't looking for any appearance whether she was intoxicated or anything. Like I said, all I wanted to find out is if she was a witness.

SS: Okay.

JN: I wasn't there to, you know, basically FI her, trying to do some sort of proactive stop, where, you know, hey, you know, hey, have you been drinking, are you under the influence. I didn't do any kind of that.

SS: So you didn't ask her any of those types of questions?

MS: Did she seem, um...

JN: She seemed bubbly. She seemed a little bubbly the first time.

MS: Okay, but did she seem, she didn't seem 5150 to you, or, like maybe a street type of person that's, you know, kind of crazy when you talk to them, talks a lot and doesn't make any sense? Did she seem like that to you at all?

JN: Mmmm, no.

MS: No?

JN: Not that I recall. Um, she's, she was just, you know, bubbly, like happy-go-lucky.

MS: Okay.

JN: But she wasn't, uh, really, uh, I didn't, and again I wasn't trying to look for any of those signs whether she was under the influence or whether she was drunk.

MS: Right.

JN: I just wanted to see if she witnessed anything.

MS: Okay.

SS: So, uh, did the, just so I understand, the whole stop was two and a half to three minutes? Or, until you found out it was unfounded, and then you talked to her a little more, you said, and told her to go home?

JN: I want to say the whole entire stop was roughly around there.

SS: So, it was pretty brief, then, two and a half, three minutes.

JN: It was a brief encounter the first time.

SS: Okay.

JN: It was a very brief encounter the first time.

SS: Uh, then, did you actually walk on the stop, do you remember?

JN: No, I don't believe I did, because, uh, the unit was off with a possible subject, and I wasn't going to break air traffic.

SS: Okay, so you never went off either on your MDT on your computer...

JN: No.

SS: ...or on the, your police radio?

JN: No. I did not.

MS: Was there anybody else you contacted in around that area simultaneously either before this person or after this person?

JN: No. Like I said, I was en route to go and assist the officer, uh, and she was the first person I saw that was standing out in the street near the area, and I just wanted to see...

MS: Out in the street, or...

JN: On the sidewalk.

MS: On the sidewalk.

JN: On the sidewalk, and so I figured well, the person on the phone, they could be talking to Dispatch, they could be a witness, or they could be a victim. So, I decided to stop and just say, "Hey, did you see anything?" period. Um, but once I found out it was, there was no crime, there's no need for me to go on and contact any more people.

MS: Okay.

SS: And I know it's hard for you to remember times, but could you kinda narrow it down a little bit to what, was it like early in, was it morning time, or was it like when you first got on? 'Cause you guys work twelve hour shifts, so...

JN: Right.

SS: ...you know early in the evening, or...

JN: I couldn't tell you. I know it was dark, or it was getting dark, and that's all I know.

SS: So, it was either dark or getting dark?

JN: Right.

SS: Okay.

MS: Did you see anybody else with this particular female, uh, either walking away from, come up to her while you were...

JN: The first time?

MS: Yes, while you were talking to her?

JN: No. The first time I just saw her standing in the sidewalk.

MS: Okay. All by herself?

JN: All by herself.

SS: And to the best of your recollection, it was somewhere close to either the 7-11 or...

JN: Or where that motel is.

SS: Where the motel is right next to it.

JN: Somewhere around there.

SS: Okay.

JN: To the best of my recollection, she was around there. She might have been a little bit further up, but I, to my recollection, she was close by the 7-11 and motel area.

SS: Okay.

KR: The distance between 7-11 and the motel?

SS: They're right next, they border each other.

JN: They're right next to each other.

SS: Yea, their driveway is, and the next driveway over is the motel.

MS: Do you know if you, after you contacted her, you may have gone into the 7-11?

JN: I don't see why I would have went into the 7-11.

MS: Not to get a cup of coffee...?

JN: Maybe later on that night, but not, I don't think right after the contact. I don't believe I did. I don't recall going in there. I may have, I may have not. I don't know.

SS: Um, this, so then you said you did not go off on the radio or your MDT, so you were in service still according to...

JN: ...according to ...

SS: So then you just, you would leave then, right? You wouldn't have to go in service, or...

JN: Right.

SS: ...so you would have been no...

JN: Well, if I would have found out she was a victim or a witness, I would have definitely got on the radio and said, "I got a witness. I'm off with a witness. I'm off with a victim."

SS: Right. But, because that didn't happen, then you just, like you said, you got back in your car and then went back in service?

JN: Right. I just got back in the car and went back into service.

SS: Do you recall where you went after, after that?

JN: No, I don't. I don't recall.

SS: Okay. Uh, is there anything else about that particular, I know you said there was a second time, but about that particular stop that you can remember that might, anything else significant, or anything that...

JN: No, I just remember when I was driving off, um, that the actual stop was, maybe up two, two and a half blocks further, uh, on Jackson, on the north side, I remember passing up the guys.

SS: Oh, the other officers?

KR: You mean the 211? Or whatever they were doing there?

JN: ...unintelligible...what they were doing. They were off there and they're lights were going.

SS: So two blocks...

MS: Up by Silva? Was it up by...

JN: I want to say around that area.

MS: Jackson and Silva?

JN: Yea, on that side of the street.

MS: Same side that you'd stopped her on?

JN: No, no, uh...

MS: The north side. Okay.

JN: The north side there. I remember passing them up and seeing them there. But they were all Code 4. There was no...

MS: Well you know that little Baby, what we call Baby Super, I don't know if they still call it that.

SS: That market on the corner.

MS: Okay.

JN: Yea, I want to say around that area.

SS: So, obviously then you must have continued eastbound.

JN: Right.

SS: Okay.

JN: But, I mean, as far as what I did after that, I, everyone could look at my unit history.

SS: Okay. Uh, then you said there was second stop?

JN: Second stop, um, later on that night, um, there was, I think...

MS: How much later do you think it was?

JN: I don't know.

MS: I know you're not keeping track, but if you can kind of just think.

JN: I know it's approximate, but, approximately two to three hours later, maybe.

MS: Okay. Okay, go ahead.

JN: Roughly around there. I can't recall, but I remember, um, there was something that happened on the south end, a major incident was happening on the south end. And, I remember looking at, um, who was available, and I was available, and I think one or two other people were available on the north end. So, I didn't want to go off on anything. I said, well, I guess I'll just hang out on Jackson, behind Kragen and just type in a quick domestic report, just to keep myself available. Um, uh, I remember going parking there and then, uh, beginning to type my report, or waiting for the system to come up so I could go ahead and type my report. Um, at that time, uh, I remember seeing a person with a black sweater, hoodie, um with the hood over their head walking, um, past Kragen in the back parking lot. I remember contacting that person, saying I think I was, I think I was still sitting in my car, saying, "Hey, you know, what are you doing?" Or, you know, something, I can't recall my exact words. Um, but I was just, my intent, again, was not to get into a proactive stop. There was something that was either was just now, um, ending, or it was still in progress. I think that 10-3 on Huntwood, because the south end thing. I forget what it was.

KR: What's a 10-3?

JN: Uh, meaning, uh, keep restricted, restricted radio traffic, and it's usually to that incident, so everyone on that incident can use the radio.

KR: Okay.

SS: A Code 33 at the Sheriff's office.

KR: Thank you. Thank you, Steve.

JN: Okay, and I remember not wanting to go off on the radio. I remember not wanting to do anything proactively, because of that. Um, and then, I remember, uh, having contacted that person, person was approaching me, pulled the hoodie down, and then that's when I realized it was the same girl that I stopped earlier, as, as, uh, for a witness. Um, then I got into a little bit more detail, like what are you doing here, uh, what are you doing walking back here.

MS: Are you out of your car, are you standing...?

JN: I got out of my car at that point. When I saw the person approach me, I got out of my car.

KR: Do you remember what they were doing?

JN: Um, first what she was doing, was she was walking, she had a phone, well, the person at that had a phone and was walking by and looking at the, uh, building, looking to the building. Just kind of walking in and looking in. So, that's what made me contact the person with the phone, and just scare them - I'm here, they'll be knowing, I'm, uh, right here. So...

MS: Where were you when you were, you say you were back by the Kragen, but where exactly were you?

JN: It was, um, there is a little cutout in the parking lot, and there's a dumpster. I just parked right there, 'cause that's the most lit, lit up area.

KR: Would this help?

MS & SS: Yea, that would help. Have him draw it.

MS: Sure that would be great.

KR: Drew a diagram up here.

MS: That was smart. We can keep it that way.

JN: Yea. Okay...

SS: And just, 'cause there's two Kragens on Jackson. This is the one at Park and Jackson.

JN: Yea. Correct.

SS: I think it's current 50...

MS: 268.

SS: 268, would that, okay.

JN: I don't recall the address, but yea, it's the one right there.

SS: Yea, the other one's up on by Five Corners. I just want to make sure, okay.

JN: Right, that's not the one by Five Corners. Okay, and I think the driveway goes like this, goes down like that, and another driveway here. I think 7-11 is over here, and it goes continues one, and then I think there's another street that goes off right here.

MS: Is this Park here?

JN: Yea, that's Park.

MS: Okay. 'Cause the 7-11 would be up here, 'cause Park actually crosses Jackson.

JN: Okay, and then I think there's a, there's one or two other streets...

MS: Clements, I think, or not Clements.

SS: Yea, I'm not sure what...unintelligible...

JN: Pontiac.

MS: Pontiac. Okay.

JN: So this is Park. Here's 7-11. This is Jackson. And, I believe Kragen is right here, and there's some other offices, other buildings right here.

SS: Right.

JN: And then, uh, there's a wall that goes back here, cuts out, kind of angles out that way.

SS: Right.

JN: And there was a dumpster here, 'cause I remember the dumpster, and I was parked right there.

SS: Okay.

JN: It's well lit right there in this area. It's not too well lit in here.

SS: Okay.

JN: So I was parked right here.

SS: Which way is your car facing?

JN: It's facing that way.

SS: Okay, so you're facing out, so you can see...unintelligible...

JN: I can see out here, and I can see Jackson.

SS: Okay.

JN: And then I can see part of this street.

SS: And this is, and for Kathy's benefit too, this is a 8-ft. soundwall? Does that sound familiar to you, it's a, where you can't see over, it's a pretty good size, uh...

JN: It's a pretty good size wall, I'm not sure how tall it was.

MS: Eight or nine feet.

SS: ...unintelligible...actually measured it.

MS: Oh, did ...unintelligible...okay.

JN: Yea, I, I'm, I know, told Kathy that it was a...

SS: Yea, it's a, so it...

KR: It's taller than six feet, I think is what we're going after.

SS: Yea. Okay. So you're backed in there.

JN: So I'm backed in here, I see this person walking this way. That's when I, I contacted that person, the person continued walking, and walked towards me, that's when I got out of the car. Um...

SS: So you say to that person, "Hey." You motioned to that person to come over?

JN: I didn't motion to that person to go, I just said, "Hey, you." Like that.

SS: Okay. And then they see your police car.

JN: And then they see the police car and they start walking towards me.

SS: Do you have your parking lights on, headlights on?

JN: I believe I have my parking lights on.

SS: Okay.

JN: And then, uh, came walking, and we were out here talking, uh, I basically asked what she was, what was she doing. And she said, I can't recall what she was saying, uh, maybe, I couldn't even ...unintelligible...what she was saying.

MS: Do you recognize, is this the same girl from before, or is this somebody different?

JN: After she pulled the hoodie down, I realized it was the female, and I realized who it was. It was the girl I had talked to before, and then, also she had said, "You already stopped me before. Why you stopping me again?" Um, she was a little bit more hesitant in giving me her name this time, or even, I can't even remember if she gave me her name the first time, but, uh, she was a little bit more hesitant. She said stuff like, "Well, why you stopping me?" And I told her, "Well, it's dark. It's not normal for someone to be walking in the dark behind buildings." I go, "I just wanted, I didn't know it was you, um, you had your hoodie on, and I thought you were looking in there to case the building, or something." Um, we were talking there, and then, um, I asked her for her name, and I think she gave me her name verbally. And then I said, "Well, do you have any ID to verify your name?" And then she said, again, I don't know what she said, I don't recall what she said. But, then I do remember asking her, uh, if I could see, 'cause she had a purse, a real small purse, if she had any identification in that purse. Um, again, I don't know what she said, if she had ID or not, um, but she did give consent to look in her purse.

MS: Okay.

JN: So, I said, "Okay, fine." Uh, while I was looking in her purse, going in there to verify her ID, I was approached by two other people, a male and a female, an older couple. Um, the male came out screaming, like he was real aggressive.

SS: Now where did they come from, because you...

JN: So, we're right her, and they came out from over here. At this time, before I even contacted her, she was on the phone.

SS: Okay.

JN: So, I'm assuming that she was talking to these people.

SS: Okay.

JN: Um, up until the point where I asked for her purse, she was still on the phone. Um, she hangs up, and then, um, while I'm looking in her purse, these people come walking up.

SS: Okay.

JN: So, it was a male and female. The male was on that side, and, I believe the female was on this side, and the male was going, "What are you doing, what's going on? This is bullshit." And he's all, "You don't have a right to stop her. You just...what are you doing?" At that point, I got on the radio, and I broke traffic, and I said, you know, I need a cover. ...unintelligible...I'm not exactly sure how I said it, whether I asked for an expedite cover, or whether I just asked for a Code 8. I got on the radio, and I asked for a cover unit.

SS: Okay. I'm sorry, I missed that. You said you broke traffic, so that's when there was a 10-3 the second time as well, then?

JN: I, be-, I believe so. I want to say yes, 'cause that's the reason why I didn't want to go off on doing anything proactive, 'cause there was something that was happening.

SS: Okay. Okay.

JN: Um, and um, and I believe it was still happening, or they still had or were maintaining a 10-3. Um...

SS: Now just so when we go back and verify, did you maybe switch to channel 3 to do that? 'Cause, that's normal protocol if we have, uh, emergency traffic on one channel, we go to another. Would you maybe have switched to another channel?

JN: I may have switched to channel 3 to call for cover.

SS: Okay.

JN: I think I may have done that. I'm not quite sure what channel it was.

SS: But you did, you know you came on to the...

JN: I know I came on the radio, and I know I called for cover.

SS: Did you use your, um, car radio or your...

JN: My radio.

SS: Where do you keep your radio?

JN: Um, I keep it on the left hand side, but then I strap it around and then clip it in here, 'cause usually when you drive it falls.

SS: So you don't have one of those fancy ones where the guys clip...

JN: I do have, I do have an earpiece, but to speak, I use the mike.

SS: You use the mike right here. Okay.

JN: Um, he was real animated, real, real aggressive, saying, you know, "Hey, what's this? This is bullshit. This is...you shouldn't be stopping her, da da da da da." That's when I got on the radio, I can't remember if it was on channel 1 or channel 3, but I remember getting on the radio and asking for a Code 8 cover. I remember giving my, my, uh, location. Um, at that point I wanted to keep some distance between them and me, so I walked over towards the back of the car, so I was right here, like keeping some distance from them, because one person I know I can handle, two people, uh, and three people, no. And it just depends on who they are.

SS: Where is this female right now?

JN: The female was always either to the left of me about maybe from me to you guys, so...

SS: In between the male and the female...

JN: Once they came, once they came over, she was in between, and then she kind of kept on walking back like towards behind me, but I was right, I could see her on my, on my peripheral, and uh...

...unintelligible...

JN: And then, um, I remember, uh, the female, the other female, she was walking up and screaming. She was more of a like a confused, acting more confused, like she didn't know what's going, like, "What's going on? I don't understand. Why you stopping her? Why, what's going on?" She's all...and then, uh, she yells out, "Why is her bra off?" I'm like, "Excuse me?" I go, "Her bra ain't off, and if it is, I wouldn't know." Um, but

she ended up like asking me, "What's going...why did you stop her? Um, What's going on?" So, I finally told her, I said, "Okay, look, you guys calm down, and I'll explain what's going on." Um, meanwhile, the guy, once he heard me ask for a cover unit. He said, "Come on, let's get out of here. Let's go. Just get his name, and let's go. Let's get out of here." Um, I said, "Hold on. Hold on. Hold on." You know, and I remember telling the lady, uh, why I stopped her. I told her, "Look, it's dark out here. I go, she's looking into, she's walking across a very dark place, she's looking into the building, um, it's not safe for her to be out here. I just wanted to say...unintelligible...have to arrest her, I'm not out to arrest her." I go, "Who knows, maybe another officer might, might arrest her. I wasn't going to do that. All I wanted to know is get her to verify her name and stop, I mean do you know this person?" And they said, "Yes, we do." And I said, "Okay, well, if you know this person, um why don't you take her and keep her to the house. This is the second time I've talked to her out here, and she's really not doing anything."

MS: When she came back, did she stay here the whole time that they're confronting you, or what did she do?

JN: Yea, yea, well she was kind of like walking back and forth, doing this, um, but I could still see her. Um, yea, after that, um, yea, after that, I told her uh that, you know "I'm not out to arrest her, I'm just wanted to verify her name." I go, "But, like if you guys know her, just get her, get her inside your house, and we're done with that."

SS: Did you get her name from, from her or from them.

JN: She told me her name verbally. I didn't get to write it down, and that's the reason why I asked for her purse, so I could verify what she was telling me. Unfortunately, when I was going through her purse, that's when I was approached by those two people, so I don't believe I ever got to...

SS: Did you ask those people to verify the name that she gave you? If that was her?

JN: No, 'cause they weren't being very cooperative. They were just, you know, "Forget it. Let's just go. Let's just go." So, I, the guy just seemed very, he was very, uh, aggressive.

SS: Could you describe him, please, to the best - I know it's been a while?

JN: Um, I want to say he had on a T-shirt, and he had I want to say light hair, and about 6, 6-1, 6-2.

SS: Thin? Heavy?

JN: Heavy build.

MS: White, Hispanic, Black?

JN: White. And the female, I want to say she had light hair as well. I have no clue what she was wearing.

SS: How about age?

JN: I want to say they were in their mid 40's.

SS: Had you seen either of them before?

JN: Around prior to this contact, no.

SS: So, to your knowledge, you had never dealt with these people on another call or seen them before.

JN: No, I never met them before, no. To my knowledge I've never contacted these people before. Not that I remember.

SS: Okay.

MS: How long do you think was the entire time of this contact with these people, with her and all that?

JN: This contact here? I want to say three or four minutes, five minutes at the tops. It wasn't very long, 'cause I, I had to explain to, well I explained to the female that approached, the older female, what was happening, plus I also talked to, uh, the person in question. I was talking to her about what was she doing there...unintelligible...plus I was looking in her purse. Uh, it could have been four or five minutes.

SS: How long would you estimate from the time that you made the initial contact, when you yelled, "Hey, what are you doing?" and then she walked over to your car, uh, and you were dealing with her and the other two individuals came up. How long until you actually called for a cover unit?

JN: A cover unit? Probably about two, three minutes.

SS: Okay.

JN: It wasn't very long.

SS: And then, how long did it take for your cover unit to get there?

JN: He was, he got there just as I told them, "You know, um, you guys, if you know her, if she's willing, you know, just take her inside the house and keep her inside the house. But she's out here, and it's unsafe." And I told him about, you know, being in a not a safe area, and I remember them walking out as he's pulling in.

SS: So, walking, three of them together?

JN: All three of them, all three of them were leaving, so they were, all three were leaving out here, as my cover unit was pulling in.

MS: So do you think they passed each other?

JN: Oh, they definitely passed each other. They definitely passed each other.

SS: And you think your cover unit came in from the Park Street side?

JN: He, he came in from the Park Street side.

SS: Okay.

JN: And then, as he was coming in, I was already getting in my car and pulling out.

KR: Who was your cover?

JN: Uh, it was Officer [REDACTED], who was my cover. I remember stopping here and facing this way as he faced that way.

SS: Okay.

JN: And then, uh, he got out of his car and he goes, "Hey, what are you doing?"

SS: Oh, he gets out?

JN: He gets out of his car.

SS: Okay.

JN: And he goes, "Hey, what are you doing?" And I go, I go, "Nothing. I was just trying to write a report, and I get approached by these people." And then he goes, "Oh, okay. Well, is there anything we need to do?" And I said, "No, they're going home. They're, it's a big nothing." He says, "Okay." So, I said, "Okay, let's get out of here." He said, "All right. We'll get out of here." And, he backs out and goes back the same way he came, and I follow him. People are still right here in the corner, right here on the parking lot.

SS: Okay.

JN: And, so, they watch us drive off. But before that, um, before they leave, I told, after I was talking to the, the older lady, I said, "Uh, look, if you have any questions or concerns, um, here's my name. And I give her my name, and I give her badge number,

and I said, "Contact the Police Department if you have any further questions." And they said, "Fine." Um, they...unintelligible...um, I didn't see them writing it down, but I'm pretty sure they, they remembered my name. And that's it. And then, uh, we took off. Uh, we separated.

SS: When you came back out that to Park Street...

JN: Uh hm.

SS: ...and then you said you looked over and you could see them standing on the sidewalk...

JN: Yea, they were still like in the parking lot area.

SS: ...and it was, you could see all three of them?

JN: Yes.

SS: Was there anybody else there? Did you happen to note or see...

JN: I didn't, I didn't recall ever seeing anyone else there.

SS: But you recall seeing the three of them standing there?

JN: I remember seeing them three walking away.

SS: Did they do anything to gesture at you, or anything like that, or did they...?

JN: No, they just, they saw us, they were standing there watching us drive off.

SS: Okay.

JN: I didn't see any gestures. I didn't see any, any, anything out of the ordinary.

MS: And you're sure it was the same three that you had contact with in the lot?

JN: Yes, I'm...

MS: And not three totally different people?

JN: No, I didn't see anyone else. I don't recall ever seeing anyone else. 'Cause they were, the, the three that just walked away, and they were... 'cause I could still see them when I was going out here when Officer [REDACTED] came up to me. They were still walking away. Um...

MS: Had you moved your car from...?

JN: Yea, you mean from here? From this point? Um, when Officer [REDACTED] was coming in, I, uh, they were already walking out, I got in my car and drove up and I stopped right here, facing...

MS: Facing out?

JN: Right.

MS: Oh, okay, so he pulls in here like this...

JN: And we were like that.

MS: ...he's facing the wall...

JN: He's facing the wall, I'm facing BART.

MS: Okay.

JN: Um, he gets out of his car and talks, you know, what's going on.

MS: Did you point those people out to him...

JN: Yea.

MS: ...and say, yea, those are the people?

JN: Yea, I did. I pointed out the people. And he goes, and he goes, then, he's all, he's all, whatever. He said, "Okay, anything?" I said, "No." He's all, "Okay." Then we get in, he says, "Let's get out of here." I say, "Okay, let's get out of here." So I honestly didn't think of anything. I didn't think it was going to be bad, uh, the only concern was for me is, I thought it was going to come out as a, as a, you know, this officer stopped me twice, he's harassing me, you know type of deal. So, um, we take off, and I'm following behind Officer [REDACTED], and he gets assigned, or gets called to another call. So I'm with him. I can't remember if he says, uh, 68's with me, or if I said I'm with him, and I'll be his cover. So we both get assigned, um, to another call up on, I want to say it's on B Street, or on Mission, no I'm sorry, on Main Street, somewhere on Main Street, we get called to a, on Second and Main, or something like that. Um, a call to some lady who was making some report. We get there, we find her to be 5150, so we're staying there to wait for the ambulance to come, and fire department's, as a matter of fact, it's right across from fire department. Fire department came out, and they're like, well you know, we really don't know what, I think she, you know, probably needs her meds, or whatever. I forget what it was exactly, but we ended up, I believe we ended up 5150ing her. The ambulance came, the ambulance took her, and right after that ambulance took her, I remember getting back in the car and saying, "Okay, well, I'm going to do something else." And then, we were separating our way at that time, and I said, well, let

me just type in to my, uh, Sergeant and let her know about that other previous stop. 'Cause I didn't want her to get any, you know, um, a call and saying you know your officer is, you know, harassing me, and her not knowing about it. So, I did. I typed her an MDT message, "I need to 98 with you."

SS: And this is to Sergeant?

JN: [REDACTED]

SS: Okay.

JN: Um, I remember typing, "I need to 98 with you. Are you available?" Uh, she, it took her a while to call me back, or actually, type me back. When she types me back, I remember her saying something that she was, she needed to get some gas, and she was at the Depot station. So then, I remember typing her, "Well we can 98 at Chabot parking lot," or I wasn't sure if she mentioned it, or if I mentioned it.

SS: Okay.

JN: I remember going over to Chabot, um, waiting in the parking lot on the Depot side, and she came up and, and uh, met with me. Um.

MS: Chabot College.

JN: Chabot College, right there on Depot and Hesperian.

MS: Um hm.

JN: Um, we met there, and I told her I had this kind of a strange stop. I go, I might get a complaint of, a citizen's complaint, or someone saying that I was harassing them, that I stopped them twice. And, I remember her asking me if, she says, "Well, was she drunk?" And I said, "I don't know. Could be. Maybe. I don't know."

SS: So, you, just so I'm clear, you told Sgt. [REDACTED] that it was a female you stopped?

JN: Yea, I told her I stopped a female...

SS: Did you tell her where?

JN: Yea, I believe so.

SS: Where it had happened?

JN: And then she said, "Okay." She goes, "Did you get a name?" And I said, "No, I didn't get a name. I didn't verify it. I couldn't verify it at the time I, I, you know, with

all the stuff that was happening between the two couple that came up. I was trying to deal with them, and then also trying to deal with her, and then they were acting aggressive, one was acting aggressive, the other one was acting confused, and now the girl, the actual person in question, um, she was at first kind of hesitant, and then she was kind of, but she was cooperative, um, meaning that she let me see her purse and go in her purse, and get consent, and all that stuff. Um, and I told, um, Sgt. [REDACTED] about, you know, the stop and, about both stops, and she said, she goes, "Shame on you. If she was drunk, you should have at least, well, arrested her for being drunk." And I said, "Yea, you're right, and, lesson learned, I won't, you know, cut a break to anyone else anymore." I go, "I was just to save, save us from being, um, accused of anything." And she goes, "Okay, well lesson learned." And I go, "Yea, lesson learned." Um, after that she says, "Well, if you drive back in that area and you see her, give me a call, and we'll stop and talk to her." I said, "Okay, fine." She said, "I'll be driving up and down that area, too. If I see her, I'll stop and, you know, see what's up, what's going on." I said, "Okay, that's fine." And we left it at that. Um, and if you said it happened on a Saturday night? Is that what it was?

Multiple voices: Saturday night/Sunday morning.

JN: Okay, on Sun...on our Friday, which would be Sunday, Monday morning, um, Sgt. [REDACTED] came up to me, we were walking in the hallway at the Police Department, and says, "I guess it's a big nothing. No one complained. There's no citizen's complaint." I said, "Okay." She says, "Don't worry about it."

SS: So she approached you? Sgt. [REDACTED] approached you?

JN: I think, yea. Well we were both walking on the hallway...

SS: Okay.

JN: ...by the radio, where the radio batteries are...

SS: Uh huh.

JN: And she says, "Yea." She goes, she goes, um, "There's no complaint. There's nothing, so don't worry about it."

MS: How long after this, that night? Was it the next night, or the next shift?

JN: This the next shift over, the next shift day.

MS: So, at least three or four days have passed? Right?

JN: No, no, one day had passed.

MS: Oh, next shift, the next shift.

JN: Yea.

MS: I'm sorry, all right. I was thinking the...

JN: 'Cause, uh, our shifts is from 6 to 6:30 in the morning, um, I believe I was working Friday, Saturday, and Sundays, but on the third shift, um, it kind of moves into the Monday morning, and early Monday morning. So, that's why, when we were about to go for our weekend, she said there's nothing, no one complained, don't worry about it. I go, "Okay."

KR: You told her about the comment that the other team member made to you, or the statement about what went on?

JN: Yea, yea, I told her about, I told her about, uh, I said, you know, there was statements made out that why was her bra off, and I go, "I, she never took off her clothes, uh, I don't know what the heck that was all about."

SS: So you did tell Sgt. [REDACTED]?

JN: Yes, I did. And she said, "Okay." She's well, she goes, "Oh, well." And that's why she said, "Well, if you see her, um, stop her again, and then call me, and then we can try and figure out what's going on with that." I said, "Okay."

SS: So, your specific statement to, as you remember it, to Sgt. [REDACTED] was, "This woman made a comment, the older lady made a comment about the younger one that why..."

JN: Why is her bra off. And, if I'm correct, um, I don't know, you might want to listen to the radio, I think when I was calling for cover, she screams out that, "Why is her bra off?"

SS: Oh, the lady, she's screaming to you so...

JN: She's screaming out, "Why is her bra off? Why, what's going on? Why are you stopping her? I don't understand. Why, what did she do? Da da da da da, and I'm like, "Hold on woman, you need to slow down." I go, "First of all," I go, "If her bra is off, I have no clue, she has her clothes on." And, um, as far as why I stopped her, and that's when I went ahead and told her, you know, the reasons why I stopped her. And not really, I didn't mean to stop her, I just wanted to show her that I was there, so she could move on. But she ended up walking up towards me.

SS: Back to, uh, when you were talking to Sgt. [REDACTED] did she ever instruct you at that time, once you told her that, to, to write some type of police report, incident report, uh, suspicious circ., one of those type reports that document your stop?

JN: I don't ever recall her ask, tell, asking me to do that. Um, one of the major reasons was, 'cause we never even got to verify her name.

SS: Okay.

JN: We never even got to verify the person's identity, so, I mean, if I was gonna, on, it would be kind of silly to say an unknown person, you know, stopped an unknown person, du, du, du, du, put it on the report without...

SS: And did she ever say she would document it in either a Supervisor's Log or some type of, to document this?

JN: No, but I'm, she's, she's pretty detailed. I'm sure she has, um, I want to say she has, um.

KR: Do you know?

JN: I don't know for certain if she did or not.

SS: Okay.

JN: But she's a very detailed, um. Sergeant.

SS: Okay.

MS: So, she said if you see her again to call her and she'll come over and the two of you would talk to this person?

JN: Right.

MS: Now, were you referring to the girl you stopped, or the lady that came up saying, "Why is her bra off."?

JN: You know what, I'm not clear on that. I, I'm assume..., I was assuming...,

MS: You're thinking it was the girl you stopped.

JN: ...it was the girl that I stopped.

MS: Okay.

JN: The girl that I stopped. But see, that girl that I stopped, she was, even though was a little hesitant, she was very cooperative, she wasn't throwing up a stink. It was the actual, the older lady that was throwing the, the act.

END OF TAPE ONE - SIDE A

TAPE ONE - SIDE B

JN: I really don't know. I don't know what they're going for. I'm thinking, um then I'd be speculating, but maybe it was just a tactic for me to let that, that person go. I don't know, maybe, I have no clue. But, like I said, initially, I wasn't there to, I was just there to write my report and then scare that person off and...

SS: Is that common for...How long have you been on? Two years?

JN: Uh, just a little over two years as a regular. I was just off of FTO, I think in November, or somewhere around there. So, by myself, maybe about six months.

SS: Is that normal practice for you to go off on someone and not put it out on the radio? Do you do that on a routine basis, or...?

JN: The only time I find myself doing that is when there's a 10-3, and if I don't want, um, If I do not want to make contact, per se, like, uh, to let myself be known, as a preventive measure, I'll say, you know, just tell people, "Hey, how you doing?" just let myself be known. Na, I'm not going to put myself off and say, you know, I'm talking to so-and-so, when I'm not going to do anything. I'm just wanting to let them know that I'm there.

MS: Do you scan the channels, or do you just...

JN: I do scan the channels.

MS: So, if there's a 10-3 on one, you don't primarily switch to three so that...Let's say, just for instance, I'll throw this out there, if there was a 10-3, okay, you're in this parking lot, what if somebody totally comes running up on you, and you need expedited cover? I mean, you can do that on one, but you're not thinking ahead, "I better switch to three in case I need to do..."

JN: No, I do, I do that on my car. I do that on my car. I don't always do that on my radio, my handheld radio.

MS: So you did that on your, you asked for the Code 8 on your...?

JN: On my hand radio.

MS: And you were already outside of the car?

JN: Yea, I was already outside the car.

MS: Okay.

SS: Just the normal procedure is that, even if there is emergency traffic on one channel, we're a big enough agency that we have two channels...

JN: Right.

SS: ...and you're supposed to go off on your stops just like you would as normal traffic on another channel. So, I guess my question was, do you, without the emergency traffic, would you normally, if you see somebody that doesn't look, a female, or somebody that doesn't look like they're going to pose much threat to you, would you go off and make contact without... There are officers who do that. I'm not here to say you're right or wrong. I'm just wondering is that's something that you normally do, or is it specifically because there happened to be, coincidentally, there were emergency traffics on both of those stops...unintelligible...

JN: Well, I, I do that. I, not routinely, but I do that. It just depends on the circumstances, I mean, uh, if it's a 10-3, I always on my car radio, I switch it over to three. Um, I don't always do it on my handheld radio, but usually on, in my car.

SS: So, if I'm to understand you correctly, the first stop, the initial stop you made, you felt that she might have been either a witness or someone calling in on a cell phone.

JN: Right.

SS: And there was another emergency traffic happening down the street, so you just made contact, and that's why you...

JN: I ...unintelligible... Right.

SS: ...didn't go off on the air.

JN: That's the first time.

SS: And, and to your knowledge, you never, uh, went of on either channel one or channel three...

JN: Right.

SS: ...nor did you run her, or, uh, wants and warrants checks, or anything like that?

JN: As far as I know, I did not.

SS: And, just so I make sure, it was, uh, a, was a brief, I think a two and half to three minute stop.

JN: Right.

SS: Roughly. And then you left the scene.

JN: Yea, I, I, I want to say that I did not do that. I don't recall doing it.

SS: Doing?

JN: Uh, going on three and asking for a persons check. I don't recall ever doing that.

SS: Okay.

JN: I don't see why I would.

KR: After your second contact, did you have contact with a dispatcher or anybody?

JN: Yes, um, I did. The dispatcher, once I got back in the car, and I was following out, I got received a message from dispatch, saying, "What were you doing?" And I typed a message I was trying to write a report. Um.

SS: I, I'm sorry, the dispatch asked you that?

JN: Yea, through the MDT.

MS: Do you know which dispatch it was?

JN: I, uh,...

KR: Would that have been ...unintelligible...

SS: Yea, well they asked you on the comm...unintelligible...

JN: ...on the computer.

SS: So, there, I guess he's...unintelligible... Why would they dispatch you that?

JN: I have no clue.

SS: They said, "What were you doing?"

JN: Yea, what were you doing, like, meaning like, was I trying to be proactive, was I trying to make a stop, and I think it's because they get upset when something is happening on like a major incident and then people go off on a, a...

SS: Oh, okay, I see. So she's saying, the dispatcher ...

KR: About the cover that he ...unintelligible...

SS: Yea, like what are you doing, why are you doing this...

JN: We're wondering why we're doing this right here, there's a major incident happening over here, why you going off on people?

MS: Okay.

SS: Do you remember who, what dispatcher, or who you were talking to at the time?

JN: No, it would all be in the MDT. I remember typing her saying I was just approached by people while I was trying to type in a report.

SS: And this is after, uh, Officer [REDACTED] got there, and Code 4 and then...

JN: Right.

SS: You get on the air and you call for, and this is the second stop, you call for a cover unit, and you call for a Code 8, which is our cover, uh, then [REDACTED] gets there, and I'm sorry, how long did you say it was and it took him to get there? I don't know if I asked you that or not.

JN: Uh, you did, but I can't, I think, I want to say... He got there pretty quick. I want to say about two and half, three minutes maybe?

SS: So, it wasn't an extended time.

JN: No, 'cause by the time he got there, I was just wrapping it up with the other female and explained to her why I was there and what had, what stop I was, why did I stop her.

KR: Okay.

SS: Then, do you go on the air Code 4, or do you just, do you guys once he, and then he meets you, and then do you guys...

JN: I believe I got on the air...

SS: ...go in service.

JN: I believe I got on the air and said Code 4. Okay, that we're Code 4, 'cause they were leaving and there was nothing there.

MS: Okay.

SS: And then how do you clear? Do you remember if you clear on the...

JN: I don't remember how I clear. I don't know if I clear ...unintelligible...

SS: I mean, you cleared, normally you guys clear on, I haven't been in patrol for so long, but normally you guys clear on the MDT, like 10-8.

JN: On the MDT, yea, I don't remember if I, if I typed in an extra memo, uh, I don't remember if I just hit the, 'cause they, usually, when you can't stop something, you have to clear it. Um, when they put you on stop, which they did, um, you have to clear it as far as whether you did an FI, or whether it was adjusted, or you need a report for it. Um, I wasn't sure if I, if I hit just a FI, or if I just hit the adjusted one.

SS: Now let me ask you, 'cause I don't recall, but if you did hit FI, you're saying, is that normal practice for you to hit FI and then not actually take an FI care, or...

JN: No, well, normally what happens is because MDT's think they're so touchy, if I hit FI, it was probably on accident, and I didn't want to go back and say, "Can you reopen it with reading adjusted."

SS: Okay.

JN: And usually, um, if, if I adjusted it, I normally would put in a real quick memo. Um, if I did, or didn't, I don't know if I did or didn't on that, that day, on that incident.

SS: And, again, and then this is, you know, procedural, I don't care about that, but, if, so if you hit the FI, then I'm just wondering why there's a ...unintelligible...but you're saying you never took it ...unintelligible... it might have been an accident why.

JN: It might have been an accident.

SS: Okay.

JN: And, once you hit that, it will clear the whole stop, and you can't get back into it unless you call dispatch and have them reopen it, redo it. I felt it was, it was a nothing stop, so I didn't do that. I just left it at that, then cleared, and went on back in service.

MS: Well, at some point, you had to have thought it was a something stop, because you got ahold of your sergeant and said, "Hey, heads up on this."

JN: Right. Well I, I thought it was going to be a harassment ...unintelligible...he stopped me twice. So I just wanted to let her, give her a heads up and say, "Well, if anybody contacts you, this is what's up." And then I explained to her the stop. So, I mean, it's just, just to let her know. I don't want, you know, my sergeants to all of a sudden, you know, get a phone call and they don't know what it's about.

SS: In your experience, have you ever, you're working the same beat, have you ever run into people twice. I mean, I know, both of us can say we, we, especially when I was in the gang unit, that you're running into the same people over and over again, and to stop people isn't necessarily something that, every time I stop somebody twice, I would say, "Boy, I'm going to call my, my sergeant on that." You know what I mean? That's what we're trying to...what is that made you say, "Hey, there's something a little fishy about this particular stop that maybe I better tell Sgt. [REDACTED]? Was it...do you see what I'm saying?"

JN: Yea, I understand what you're saying. Um, the fact that how the male was irate, the female was irate, and acting confused and, and just, and the fact that she said, "Why is her bra off?" Um, "Why are you harassing her? Why are you going that?" That's what threw the flag to "oh, I better tell the sergeant about that."

SS: And you're, you're pretty positive that you told Sgt. [REDACTED] about the bra...

JN: Absolutely

SS: ...and...

JN: Absolutely positive.

SS: Okay.

JN: Now I also told her that the girl did not have her clothes off whatsoever while I was there. And she never took off her clothes, she never did anything.

MS: You told [REDACTED] that?

JN: Yes.

SS: At any point, either on the first stop or the second stop, did you make contact with the female? What I mean, did you search her? Did you pat search her? Did you, uh, touch her at any, at any point?

JN: I want to say no the first time. The first time was just a witness, victim, whether she was a witness or victim. I don't see why. I would have asked her for anything other than that, other than just to see if she was a victim or witness.

SS: Did you ever, you know sometimes we do this, especially with females, you lift up to make sure you don't have any guns, knives. Did you do anything like that at all with her, or were you thinking this is a, a victim or a witness, I'm not going to do any of that type of thing.

JN: No, I don't ever recall doing that.

SS: Okay. So, to the best of your recollection, you never, you never, uh, touched her, you never asked her to visually look for weapons or contraband or anything like that?

JN: Right. Correct. Other than to get her, to see if she, to verify her identity by getting her purse.

MS: The 211 thing, do you remember any of the circumstances of that, whether the suspects in that were multiples, whether it was one, male, female, or anything?

JN: No, I don't recall at all, to tell you the truth. Um, I mean, I would if I was, you know, the primary officer, but I wasn't.

MS: Okay. But you were onto her the first time, the initial stop, thinking she could be a witness?

JN: Right.

MS: Did you ever think she could have been a suspect?

JN: I don't...

MS: Females do do robberies.

JN: No, I understand that. And, the thing is, um, the reason why I didn't think of her as a suspect was because our primary officer put out on the radio that he dealt with the subject.

MS: With?

JN: With the subject. That's all he said.

MS: Just a subject.

JN: And, I believe it was the subject who was accused of doing the 211. But then after, unfounded, but...

SS: Did, at any point, did you ever put her in your police car?

JN: No, I want to say no.

SS: And I'm talking specifically about the first stop now.

MS: Or tell her to have a seat while you talk to her and...

JN: I don't recall ever putting her in my seat. I don't see why I would have.

SS: Either in the front seat or the back.

JN: No.

SS: You were driving a cage unit, I assume.

JN: Oh, yea. I was driving a cage unit, and she would sit in the back, but I don't ever recall putting her in the back seat. I don't see why I would.

SS: Do you ever recall detaining her, such as handcuffing her, or anything like that, and placing her in the back seat?

JN: No. I don't see why I would have done it.

KR: But the question is, did you or didn't you?

JN: No. I did not.

SS: At any time did you, uh, put her in the back seat and move her from that location 7-11/Discovery Inn Hotel, that area, to another location?

JN: No.

SS: Either to the police station, or to another location away from the 7-11?

JN: No. No. From the first contact?

SS: From the first contact?

JN: No. No, 'cause from the first contact, right after I cut her loose, I went straight ahead on, going to the, um, 92 on Jackson, 'cause I remember seeing the, the units on the 211.

SS: Okay. Did any of the units up there see you?

JN: I don't know.

SS: Did you, you know, give them the Code 4 or anything like that as you're driving by, or, you, you just saw they looked like they were okay, and you kept going?

JN: I think that's what it was, that I just saw they were okay, and I already knew that the thing was unfounded, and so...

SS: So, your statement is, just so we know, that you never, to the best of your knowledge, you don't recall putting her in the back seat of your car?

JN: Yea, I don't see why I would have, 'cause I know I probably didn't.

SS: You...

JN: But I just, I don't see, I don't see any reason why I would have done it, so my answer to that is probably no.

SS: Do you recall handcuffing her at all?

JN: No. I don't recall handcuffing her at all. I don't see why I would have.

SS: Do you recall moving her out of that area from that location to another location either?

JN: No.

SS: Anywhere away from that particular area on the first stop?

JN: No.

SS: Okay. Going to the second stop, I'll ask you the same set of questions. Do you recall ever touching her? Uh, I know you said that you took her purse.

JN: Just from getting her purse, that she handed to me.

SS: Now, you said she had on a hoodie, or what do you call that, a sweatshirt, a hooded sweatshirt?

JN: She had on a dark, maybe black hooded sweatshirt.

SS: Was that the same sweatshirt she had earlier?

JN: I have no clue what she was wearing first.

SS: You don't recall.

JN: I ...unintelligible...

SS: Those things are bulky, the sweatshirts are kind of big.

JN: Yea, a lot of people wear them baggy.

SS: Did you at any time pat search her at that time for weapons, or anything of, in, in that sense?

JN: What stop?

MS: The second stop.

SS: I said on the second stop.

JN: Second stop? No, I did not.

SS: Okay. At any point did you have any contact with her that you can recall?

JN: No.

SS: Physical contact? What I'm talking, touching her for...

JN: No. And, again, I wasn't there to make a proactive anything ...unintelligible...I wasn't trying to search her for drugs. I wasn't trying to search her for contraband, nothing.

SS: But, for your safety, being that you're in a dark parking lot...

JN: Where I was at, where I was actually stopped, it was very lit lit. It was dark on the, on the portion where the Park side was and a little bit on Jackson, so it was dark there, but where I was at, it was well lit. Um, again, I don't, I, no, I didn't touch her or pat search her, which is probably a big thing, 'cause I think I should have. Um, other than that, I wasn't trying to, uh, um, do a proactive stop. I wasn't trying to make an arrest. I was trying to just tell that person that, "Hey. Police are out here. You need to go, uh, somewhere else."

MS: Let me ask this, when you took her purse and she came up on you, what did you do with her purse?

JN: I searched it.

MS: Where did you search it at?

JN: Uh, I believe I was, I was right here in front and then moved over towards, I moved over towards the back of the trunk. But I moved over to the back of the trunk after these two people approached me.

MS: So, when you say they approached you, you're holding her purse?

JN: Right.

MS: And they come up, and they're getting in your face?

JN: Right, they're, well they're starting to approach me, and they're yelling.

MS: So, you're holding on to the purse and then you ask for a Code 8?

JN: I ask for a Code 8, and then I walk over towards the back, and that's where I had, I believe I placed her purse right in the back of the trunk. I just put it there, 'cause I wanted to keep my hands free.

MS: Did you ever search it?

JN: Um, I remember going through it. I don't remember pulling anything out, but I remember going through it. Um, and that's the thing, 'cause I wanted to find out, to verify her name. Was her name correct. I don't think I ever did that. Um...

MS: So, she gave you a name, then.

JN: She gave me a name. I have no clue what the name was.

MS: And did she give it to you when she came up on you this time?

JN: Um, well when she first came up on me, that's when I asked her and talked to her and she goes, and that's when she, I believe I asked her for her name again. I go, "What's your name, again?" And then she told me a name, and I go, uh, "Do you have any ID to verify it?" And, I can't remember what she said. And I remember asking her if it's okay if I look in her purse to find any ID. And she said, she said, "Sure, here's my purse." I remember grabbing her purse, walking just a couple steps over to the car, I remember opening her purse and going through it, and at the time, that's when the people came walking up. Then when they were screaming and hollering, I walked over to the back. I remember placing her purse in the trunk, or on top of the trunk, and then, first I called for my cover, then I walked back and then, that's when I just wanted some distance from...

MS: I'm getting confused on that. Let me, I just want to be straight. Okay, she comes over, you ask about her name...

JN: Right.

MS: ...Uh, you take her purse from her, you're holding her purse...

JN: She gave me her purse right after I asked for it.

MS: ...You say then that you walked to the towards the trunk?

JN: No, I was walking towards the car, so it was right here.

MS: Okay.

JN: So, I walked...

MS: These people come up on you at about that same time?

JN: About that same time, they come walking up on me.

MS: I don't understand what time you have, you were able to search her purse at the trunk of your car, then.

JN: No, no. I didn't search it in the trunk of my car. I placed it, the purse there...

MS: Right.

JN: ...'cause I still had it in my hand. So, as she's giving me, handing me her purse, I'm opening it up, and I'm going through it.

MS: Um hm.

JN: At that time, those two people walked up on me. They're ha, hooing and hollering, um, and what they, what I told you that they said, I had her purse in my hand, um, I called for my cover, I start walking back, to, uh, to the back of the trunk, so I can have more distance from them and then from me. Um, and I'd also have a little bit of cover. I remember putting her purse down on the trunk, and that's where I left it.

MS: Okay, so it never got searched.

JN: Not fully searched, no.

MS: Okay. All right.

JN: I mean I did open it, I did try and shuffle through there, but did I actually look in cards, looking for ID's? I didn't get that, that chance.

MS: Do you remember what the purse looked like?

JN: I know it's kind of like small, um, I would say probably about six by five, maybe.

MS: Color, or anything like that?

JN: I don't remember the color.

MS: So, she stays there, with the other two to come up...

JN: Uh huh.

MS: ...Do you hand her her purse back, does she grab it...

JN: She grabs her purse back. She grabs her purse back. After I tell them, I go after I find out that those people know her, and I explained to the older lady, you know, that why I was there, and this and that, and I explained to her the whole reason for the stop, and I told them, if, uh, you know her, you know, keep her inside the house, uh, take her with you, da da da. So they were free to leave, so she grabs her stuff and takes off.

MS: When they come around the corner, and if you can remember this, when she says, "Why is her bra off," or something like that.

JN: Well she says, that wasn't her first word, her first phrase.

MS: Right.

JN: First, she was like, "What's going on. I don't understand why you stopped her. What's this?"

MS: Right.

JN: And then she comes up with "Why is her bra off?"

MS: Okay, when she says that to you, "Why is her bra off?" where was that girl standing in relation to you? Are you at the trunk of the car?

JN: I think when she says that I was already at the trunk, and she was to the left of me.

MS: So, if this is the trunk of the car, you're standing somewhere right around here.

JN: Right. I put my self right there, and the girl is right by that corner is.

MS: Okay, so she's right there.

JN: Right there.

MS: You would be, you were probably, were you standing next to her?

JN: I was in this direction, right.

MS: You didn't want to turn your back to her, right?

JN: I didn't have my back to her. I remember looking at her, seeing her, and then seeing them. So I had her on this vision, and I seen them on that vision, with the car, or the trunk, on that side.

MS: Okay. At any time when that's all happening, do you ever see her over here doing anything with her hooded shirt to make her say, "Why is her bra off?"

JN: I don't recall ever her, seeing her doing anything.

MS: Nothing with her clothes?

JN: Nothing. I don't recall, 'cause I remember after she said that, I looked at her, and I looked back, and I go, "What are you talking about?" And, that's the only thing. I mean, out of the whole entire encounter, that was the only oddball phrase that that lady said.

MS: So, at no time when you had her come up to your car did you have her out of your sight to where she could have gone - like this, as they came running up? Could that have happened?

JN: I don't see how it could.

MS: Okay.

JN: I don't see why she would do that.

MS: Well, we don't either, but I mean you're saying that the lady says "Why is her bra off?"

JN: Yea, I know that.

MS: I'm just trying to figure out how she could have, if it did happen.

JN: Right, and that...

MS: Then you say she was never out of your sight.

JN: Right, and the thing was, when she said that, I looked, I looked right at the girl in question, and she had got her hoodie sweatshirt on. I can't remember what...

SS: What was her demeanor, Jose, the, the girl, when, when this other woman said "Why does she have her bra off?", and if she doesn't...

JN: Um hm.

SS: ...why is, does she say, "What are you talking about?" or what does she do?

JN: She didn't say anything. She just like, "Aw, he's harassing me, he's harassing me. This is the second time he stopped me."

MS: So the other people seem more upset and acting strange than this girl.

JN: Oh, yea. That's right. Exactly. And the girl was more, like I said, she was a little more hesitant in giving, providing me with her information, but she was cooperative, meaning that she allowed me to, to look in her purse for ID. She was willing, you know, telling me what her name is, stuff like that. Um, but as far as me ever seeing her take off her bra, or me ever seeing her lifting up her shirt, or anything like that, no, I did not see that.

SS: At any point during the second stop, did you ever place her in the back of your police vehicle?

JN: No, the second time, no I did not.

SS: At any time during the second stop, did you ever have her handcuffed?

JN: No, I did not.

SS: And, at any time during that second stop, did you ever, and your statement is, "She walked up to you in the parking lot of Kragen's." Correct?

JN: Correct.

SS: Did you ever at any time move her from that parking lot to another area away from the Kragen parking lot?

JN: No.

SS: You never transported her in your vehicle...

JN: I never did that.

SS: ...anywhere else?

JN: No, I would not do that. And, if I did, it would be on my, on my, uh, MDT, or be on the radio.

MS: So, you're saying you would?

JN: Right, but I didn't do it.

MS: You're saying is that she was never in your police car, in either the front seat...

JN: No.

MS: ...or back seat...

JN: Correct.

MS: ...the trunk. She was never anywhere in your car.

JN: Near, just standing near it when we were all standing with those other two people. That's about it.

SS: We'll use your, your, um, drawing here, diagram, thank you. Uh, Park Street over here, and as Mark said, this is the other side of Park Street? I don't know if you're familiar with, there's a dead end, there's houses here.

JN: Right.

SS: Uh, and actually...

JN: It's over...

SS: ...it is actually close, almost dead even with the Park Street here. It's a little bit over. Are you familiar with that?

JN: Right, and then there's another street that is actually right across from this driveway.

SS: Right. Correct. At any point, during either the first stop or the second stop or any time that same evening, do you remember being on the other side of Jackson Street at all, on, on, down in this, uh, the Park Street area, which what I would call the south side, the southern part of Park Street south of Jackson?

JN: I don't recall ever going down that street that day. I may have, for other reasons, I mean, uh, I don't...

SS: Do you ever recall making contact with this female over here on this side of the south of Jackson, on the Park Street south of, Park Street...

MS: South of Jackson.

SS: ...south of Jackson. Thank you.

JN: No, I do not recall ever stopping that girl on...

SS: So, there would be no reason that anybody here citizenwise would say that they saw on that same night a police officer in a police car making contact. That would be you I should say.

JN: Right.

SS: Making contact with the female, or a female, down in this, on this side of the...

JN: Correct.

SS: So the first stop, and there are two stops, the first stop, you're eastbound Jackson, you make contact with her, and this is, we're saying is the motel...

JN: Right.

SS: ...and then the 7-11, you made contact with her somewhere in this area.

JN: Somewhere in that area.

SS: South side of Jackson. Uh, if you would have went off on the radio, which you said you probably did not because of the 10-3...

JN: Right.

SS: ...what address, I guess you would use...

JN: I would have used 7-11 address.

SS: ...would you say the address, or would you say, "I'm off at 7-11"? What's normal for you?

JN: For me? For to identify, like, 7-11, I would have said 7-11 Sycamore & Jackson.

SS: Okay. So, if you were off, and if we were to look on the radio traffic, you would say, "I'm off at 7-11..."

JN: Sycamore & Jackson.

SS: ...Sycamore & Jackson. Okay. First stop. The second stop, do you remember how you went off when you did, you did call...

JN: Right.

SS: ...for a cover. Do you remember what you said here?

JN: I want to say, I, I'm not sure I would have asked for expedite cover or if I just asked for a Code 8, um, but I remember saying I'm on, I want to say, behind Kragen on Jackson & Park, I want to say. Okay, that's ...unintelligible...

SS: So, on, uh, at Kragen behind, I mean, I'm sorry, you said, behind Kragen...

JN: Behind Kragen, on Jackson & Park.

SS: ...on Jackson & Park, Code 8, or something to that effect.

JN: Something, yea.

SS: Okay.

MS: Besides those people that ran up here and came in the lot, and her, did you see anybody else walking through this lot that caught your attention?

JN: I didn't see, there was no one there, no one that I saw that caught my attention, no one there.

MS: You know that wall that's right here?

JN: It's kind of like ...unintelligible... actually, it's right here.

MS: The big, the big wall, the soundwall?

SS: The soundwall, the 8 foot.

JN: Uh huh.

MS: Okay, there's some houses along Park here.

JN: Right.

MS: And actually one of those houses is set way back here. It's a duplex. Kind of has a long driveway that comes out here, and there's a couple windows, couple windows here, and there's a yard, like their little back yard that they have right here.

JN: Okay.

MS: Any reason why somebody who lives in this house would say that they heard, um, other things that night, other than the, maybe the conflict between you and, uh, and the female and the male that came running up on you?

JN: Prior to that?

MS: That there was other contact going on?

JN: No.

MS: Any loud voices, or just, just...

KR: You mean it would involve him?

JN: It would involve me, or...

MS: Yea, I mean while you were back there on that, while you were back there at all. You said you were back there writing a report.

JN: I was trying to write a report, yea.

MS: Did you, and that's what I said, you didn't have any contact with anybody else...

JN: No one else.

MD: ...besides that female and then the other female and male that came up to you.

JN: Right.

SS: If then prior to, uh, the female walking up to you, how long would you estimate you were there trying to write your report before you happened to see her?

JN: I'd say I was there a couple minutes. 'Cause I just pulled up in there just to, 'cause I remember still trying to pull up the mask for the report writing, looking in my laptop, and that takes a little bit of time.

SS: So you pull in here, and you make kind of a u-turn, I'm assuming, and then face out this way.

JN: Uh hm. I face out.

SS: Okay, and as ...unintelligible...said, you don't recall any other commotion, any other situation...

JN: No

SS: ...that these people here would say that they heard some things over here that aren't consistent with what you're telling us right now.

JN: Correct.

MS: Either an hour before, two hours before, three hours before this contact?

JN: I, everything I told you about that contact is what happened on that contact. I didn't contact anybody else there earlier, or when, uh, that, that's when I first arrived there, and to, um, write my report.

MS: Okay.

JN: And, like I, again, I was trying to be available. I wasn't trying...

MS: Just so I understand, before this time that you went back here and they came up on you, had you been there earlier in the night at all, for any reason, to write reports, contact anybody?

JN: No.

MS: Nothing.

JN: No. I was not there.

MS: You were not there ever before this contact.

JN: No.

MS: Okay.

SS: Is this a place that you routinely go to write reports, or how did you know about this, because it's kind of secluded.

JN: Right. It's not routine that I go there. Um, what I do is I try and figure out where people are available and try and centralize myself.

SS: Okay.

JN: If there's something going in the south end, I, from that location, I can reach downtown, I can reach, you know...

MS: Makes sense.

SS: Had you ever been in this parking lot before to do the same type of thing, centrally locate?

JN: Yes, yea.

SS: How long was it before this, just estimate. Again, I'm not asking you specifics. Is it, so this is somewhere you routinely would go to back in...

JN: No.

SS: We all have those areas you need back in ...unintelligible..., that's not somewhere you...

JN: Right. That's not a routine place I go, but, usually, if I find myself that, um, I need to be centralized in a central location where I can reach other areas fast, I, I'm, it's

one, one of the places. The other place is on, uh, right in front of the City Hall in the parking lot downstairs.

SS: As far as you remember, that night, this was the only time that you were in that parking lot.

JN: That's correct.

SS: So, the first time...

JN: The first time was out on the street.

SS: ...was on south side of, of Jackson in front of the 7-11 slash motel, Discovery Motel.

JN: Correct.

SS: You never were in the back, the first time.

JN: No, I was not.

SS: Do you, uh, wear gloves, normally do you carry gloves with you?

JN: I carry gloves, but I wasn't wearing gloves that night, no.

SS: How do you know you weren't wearing gloves that night?

JN: Because the only time I wear gloves is when it's raining. And, if it wasn't raining that day, I wasn't wearing gloves that night.

SS: Okay. Did you at any point, Jose, have any of her clothing in your possession, that she was wearing at one time? What I mean by that, there's a bra, sweatshirt, a t-shirt, a tank top, pants. Were you ever holding any of...

JN: A hooded sweatshirt.

SS: ...a hooded sweatshirt. At any time, did she ever take anything off that you would have held something that belonged to her?

JN: I don't recall ever touching anything of hers.

KR: Other than her purse?

JN: Other than her purse.

SS: Aside from the purse...

JN: Right.

SS: ...any type of clothing article. There would be no reason why your DNA would be on any of her clothing, because you never touched, pat searched, uh, or made any type of contact, if I'm understanding you correctly, with any of her clothing. Is that correct? Either on the first stop or the second.

JN: As far as I can recall, I did not touch her, so there wouldn't be any of that in there.

MS: Let me ask you this. If you were to give her, did you at all think she was intoxicated, or under the influence of anything?

JN: I don't believe. Again, I wasn't...

MS: I know you said you weren't trying to be proactive or anything, but I'm just, uh...

JN: Right. Other than her being bubbly, which is, you know, if I'd wanted to pick at it, yea, she was probably drinking earlier. But, again...

KR: Looking back on it versus how you thought at the time, I mean, could explain really...

JN: Right, exactly. See, looking back at it now, yes, if I would have, uh, drilled her a little bit more for, um, had she been drinking, what had she been drinking, and then maybe do a little bit of a ...unintelligible...to figure out whether or not she was intoxicated or not.

MS: So you didn't do any like...unintelligible...with your pen.

JN: No, I did not.

KR: Were you thinking about intoxication at that time?

JN: I was not even thinking of intoxication at that time.

MS: Or the first time.

JN: Or the first time.

MS: Okay. So not time did you look at her and go, well, you know, you're out here, you look a little drunk, loaded, doing the any kind of nystagmus test, any kind of ...unintelligible...say your ABC's, or anything like that?

JN: Right. No, and like I said, the only reason why I talked to her the second time was because she was walking and I just wanted to say, "Hey, we're out here. You need to go somewhere else."

MS: Okay.

SS: Different officers use different ...unintelligible...of field sobriety tests.

JN: Um hm.

SS: Do you have a certain routine that you use when you do a DUI?

JN: It's usually the DUI, standard DUI.

SS: Which is what for you?

JN: Walk, uh, nine paces, um, forward, you know, heel to toe, walk nine paces back, um, staying, keeping your hands to your side. That's one test. Uh, the other test is, uh, keeping your hands to your side, put your, you know, foot, point your toes straight ahead, lift your foot, uh, about 6 inches off the ground, or three inches off the ground, whatever, and then count to, uh, thirty. And then, and then, uh, do it with the other, other foot, and see if they can maintain their balance...unintelligible...also, when they're standing there, whether they're trying to maintain their balance, um, their eyes, whether they're bloodshot or watery, their speech, whether it's slurred or drag...

SS: Do you normally do this same routine with all of your...

JN: When it's pretty obvious on, on real drunks, when they're totally drunk, it's, it's pretty obvious, uh, so I just go with stats and do that, and then I don't have then go through the motions, and just do ...unintelligible...before I arrest them.

SS: Okay. And did you do any of those?

JN: I didn't do any of that with her.

SS: Okay. Mark had mentioned nystagmus. Do you understand what that means?

JN: Yes. In fact it's without horizontal gaze nystagmus. Like, uh, they're focusing on, on pointing a pen, uh, for the degree of, of, uh, them following their eyes, it does it involuntary...

SS: Do, do you use that?

JN: I use that sometimes, yes, I do.

SS: Some people will use, I was taught to use the phone. Some people use a pen, some people use a...Do you use...

JN: I use a pen.

SS: Okay.

MS: Now let me ask you this. When you contact somebody on the street that, when you're doing proactive, looking for somebody to hook, you know, you think they're out there, you're going to make the contact with them. Can you explain to me what your procedure is if you go off on them? What, from the time you see them, and you go off on it, if they're doing something, or if you just want to make a consensual stop, and maybe it leads into something. How would you do that?

JN: If it's just a consensual stop, ...unintelligible... if it could lead into something else, I'll just stop the car, get out of my car, and say, "Hey, how you doing?"

MS: For this, since she was on the sidewalk, or on the sidewalk in the parking lot, let's go with a ped stop. Tell me how you would do a stop if you were proactive. If you were going to try and look for something...unintelligible...whatever.

JN: If I was proactive, If I was trying to be...

KR: If there's not a Code 8, or whatever...

SS: Right. And it's just the normal stop. Yea.

JN: If it was a, just a proactive stop, I would go just like I did now, or if, I would access the threat first. If it was just a female, uh, which, I'm not trying to say, you know, females are not tough, or they're not, um, holding any weapons, or anything like that. But I tend to be a little bit more lax around females than I am a male. So, I probably wouldn't have gone off and said, "Hey, you know, I'm off with a subject" until I would approach her and kinda, um, kinda seeing you know what, basically do a consensual stop. "Hey, how you doing? What are you doing here? Or, have you lived here long? Da da da, and then, once I start realizing she's trying to backtrack well then I'd say, you know, I'm off at so-and-so so-and-so, and that's it. I wouldn't ask for a Code 8, but a lot of times, um, a Code 8, you can say you were going off on a, on a ped stop, and you'd have people coming at you, um for cover. I do it, when I hear people go off and not ask for a Code 8, um, which is the standard procedure, when you hear someone go off on a ped stop, that you at least go en route and go towards that person's location in case it turns into a Code 8.

SS: Now, is there a way that you could, uh, avert that by, and I know when I've gone off on people before, it looks like, hey, it's gonna be okay, I'll say my call sign I'm off and I'll say Code 4.

JN: Yea, there's times that I've done that.

SS: Okay, so you've done that. You know what, I know my partner's ...unintelligible...

JN: ...unintelligible...

SS: Yea, and hey...

JN: If I know my partners are busy, and I just want to, you know, make sure this person's okay, whatever, I just say I'm usually, you know, either stop and talk to them real quick, and if I feel that they're a threat or if there's something shady going on, then I'll prompt my stop. If not, I'll stop, and if I think it's in a shady area, the person looks shady, uh, then I'll just say right off the bat, you know, hey, I'm gonna be off on da da da on a ped stop, or I'm going to be off on a car stop or an 1154, you know, which is a suspicious vehicle, or something.

SS: So would it be not uncommon for you to say, uh, Charles 68, I'm off on Jackson & Sycamore, Code 4, so putting it out, but then letting them know that, hey, I'm off, but I'm, everything appears to be okay.

JN: Right.

SS: Is that something that you would...

JN: I would normally do that under, if, if...

SS: If there was none, emergency traffic.

JN: If there wouldn't have been emergency traffic, I would definitely have done that. Um, unfortunately, in that incident, um, they brought the subject who may be the suspect of a 211. So, I wasn't going to go on the air and break their emergency traffic, you know, in case they needed it.

MS: So, beyond that now, once you've gotten past that, you've stopped them, let's say you believe they're not a threat to you, and you're Code 4. What are you going to do with that person? Are you going to...

JN: I'd just let them, cut them loose, or, or if I need to do a FI, I'll do an FI.

MS: Okay. What would make a determination for you, whether or not you were going to write an FI or not write an FI?

JN: Um, usually if I've seen them there, like I've driven down the area, and I've seen them there, and I go back, and they're still in that same area, then I will get an FI. Only because I know they are probably up to no good.

MS: So the first time you wouldn't probably write an FI?

JN: The first time I wouldn't write an FI, or if I drive up on them and never seen them before and haven't seen them in the area before, um, I'd talk to them and see what they're doing, and they usually, a lot of them are, you know, just getting off the freeway, or something, and, uh, they'll say, "Oh, I'm here, you know, to do this." And, if it sounds legit, it's okay, "See you later, just be careful. This is Hayward." So.

MS: Are you going to at all ask them if you can pat search them for weapons, or anything, for your safety?

JN: No, not all the time, no. I mean, it just depends on the situation.

MS: Okay.

JN: I don't normally search everybody.

MS: So, you, he already asked you, but you said, you know, you didn't search her there, or pat search her or anything.

JN: Right. I don't believe I did, no.

MS: Was, and there was no searching of anybody, even the people who came up on you that were a threat to you?

JN: Right. I didn't search them.

MS: You never searched them or asked for their ID either.

JN: Exactly. Okay.

MS: Is there a reason why?

JN: I...

MS: If they're a threat to you, I would sure think you would want to find out who they are, and, you know, and they're getting in your face. Maybe they got warrants, maybe they're under the influence, they're, you know. If I thought that why is this strange incident occurring all of a sudden, you know.

JN: Exactly. See, the thing is I did not want to get into that type of stop. Um.

MS: Why, why not? You're in it. I mean, they ran up on you. They caused it.

JN: Right. You're right.

MS: As you say.

JN: But, again, I didn't want to be in that type of stop, um, there was something going on. I didn't want to get tied up and have the other units come and, and get tied up on, on something like this. Um...

MS: Now that, you said, was a couple hours after this thing. Do you recall whether it was still busy or not three hours later or two hours later?

JN: If I recall...

KR: He answered the call.

SS: Yea, that's what he said there was a secondary.

MS: Oh, there was?

KR: He was writing the report in the back...unintelligible...

SS: Yea, I misunderstood what he said in ...unintelligible...

MS: All right.

SS: So he said that's why he said there was emergency traffic on the air.

JN: That's why I pulled in back there and keep myself available, just time for a domestic report, is what I was telling him that.

KR: Why did you call for a cover unit?

JN: I called for a cover unit only because those other two, um, came up on me afterwards and were being aggressive, so that's when I called for a cover.

SS: So, just hypothetically, and I know this is I'm asking for speculation, but if you, uh, had, if those people hadn't come up on you, you probably would have just dealt with the female.

JN: I would have just dealt with her, just probably would have, um, verified her, her name, her address, and did a good FI on her and then cut her loose anyways. I wasn't going to arrest her. I wasn't looking to arrest her.

SS: The problem we have is that there's some inconsistencies in what you are saying and what our investigation has shown.

JN: Okay.

SS: Um, there's some problems with what you're saying, and what the police tapes and the MDT traffic...

MS: unit history

SS: ...unit history show.

JN: Okay.

MS: Specifically, and I'll start with your initial stop.

JN: Okay.

MS: And I'm going to tell you...

KR: What one are we talking about?

MS: The initial first stop.

SS: The initial first.

KR: Okay.

JN: Okay.

MS: At, uh, 7-11, uh, on the south side of Jackson.

JN: Okay.

MS: You're radio traffic is that you put yourself off at 254 Jackson on a ped stop with no more information, according to your terminal, to your unit history.

JN: Okay.

MS: Um, for the next fourteen minutes, you don't respond to traffic on radio or MDT, but then, low and behold, you run a female on warrants check, still on the same stop.

JN: Okay.

KR: Where's 254 Jackson at?

MS: 254 Jackson is right next to the, um, uh, the, uh, Kragen Auto.

SS: On this side of the street.

MS: On the north side of the street.

SS: Across, not the south side. 7-11 is 339 Jackson.

KR: Okay.

SS: And, across the street is the Kragen Auto Parts here, which I believe is...

MS: 268

SS: 268, and then next to it is a dialysis center...

MS: 254

SS: ...which is 254 where you put yourself off.

JN: It could be that I looked over to that side of the street and, uh, used that address.

MS: But we asked you earlier if you had gone off at the 7-11, in the lot, what would you have said.

JN: I would have said Sycamore & Jackson, if I was in the lot.

MS: Hey, we've been out there, and I'll tell you, those numbers from...

SS: You can't read them.

MS: ...If you're across the street in the dark, you can't see those numbers.

JN: Okay.

MS: So, you know, then the problem with the stop is, there's quite a few problems. Number 1 is you do go off on radio on the stop, and you're off for 14 minutes, then you run a female by the name of [REDACTED] with a DOB of [REDACTED] which would make her about 20 years old. Okay? And you said that this girl was in her early 20's.

JN: Right.

SS: The description that you gave fits the description of the girl that we're talking about.

JN: Right.

MS: Un, you're off for approximately another four minutes and you clear with an FI.

SS: But then you said you do not taken, you may have cleared that up by saying that you, you hit the wrong button, but there is no FI card, 'cause we went back and looked, and we can't find a field interview card.

JN: Right. Okay.

MS: Um, obviously there's a 19 minute time frame that we're trying to deal with here that you tell us is a three to four minute max.

JN: Right.

MS: You're not accounting for 16 minutes of that stop.

JN: Okay.

MS: And, see this is a problem when there's allegations of police misconduct, and there's a 16 minute window in which that could have occurred. You know, we get your side of the story to try and see if everything fits, and you know, now you've got a little more explaining to do as to why you put yourself off behind or at the dialysis location and not 339 where you say you were.

JN: I have no clue why I would have done that. I have no clue.

MS: Were you at 254 Jackson the first contact, when we asked you, were you there prior, and that's in, this is the same location, here's 254, so, it's the same parking lot.

JN: I, I was not there. I mean, I could have. I, I have no clue. But, I, why I would mention this address, I ...

MS: I'll tell you, 'cause there is an address at the rear of the building above the door. There's a small glass door, and in those little gold stick-on type lettering, you know, numbers, rather...

JN: That may have been...

MS: ...it says 254 there.

SS: But I'll tell you also out front, you can see the Kragen, which is 2, what did you say?

MS: 268.

SS: 268, but you can't really see that until you...

MS: It's quite a distance.

TAPE TWO - SIDE A

Okay, this is Inspector Schwartz, uh, still October 17th, 2004. It's approximately 3:34 p.m. We appeared to be off tape for, um. We were off tape, uh, uh, for the last five minutes. We appeared to have missed some of the tape for about five to seven minutes, but we're back on tape now.

SS: Um, Officer Nunez, just when we were turning it on, did we say anything to you? Did we talk to you at all?

JN: No.

SS: Okay.

MS: Okay, we tried to listen to the tape played back to find out where it shut off, um, at the end I was asking you, or explaining to you that there, looking at your unit history, uh, the detail printout, that you were on the 2..., assigned to the 211, uh, at, and the actual address for that was 444, uh, 444 Jackson Street. Okay, um, which would have been on the north side of the street, as you said, somewhere up there near that little store. Okay. You were assigned to that as the assister at 1:02, and at 1:10 you were cleared from that, and then at 1:11 it shows you making a traffic stop, but as you put it out on dispatch over comm. 1, you said, "I'm off at 254 Jackson, Code 4, off with one, 254 Jackson, Code 4." Now, there's a 14 minute gap between the time that you advised dispatch on comm1 that you were off, and that you now go on comm 3, which is protocol to run pin checks, and warrant checks, and car plates and stuff, right? We don't do that on comm 1.

JN: Correct.

MS: So, you're switching your radio from comm 1 to comin 3 at some point, and 14 minutes after you say you're off with a person there, you then run a warrants check on a female by the name of [REDACTED] DOB of [REDACTED] Do you recall running that person.

JN: I don't recall, but if it's in my unit history, I had to have.

MS: Would that have been the person, the female, that you contacted twice that night of July 10th to the 11th?

JN: I would say it would be. I don't recall the name, um, but, if that's in my unit history, then...

MS: We had asked you before, you didn't stop anybody else.

JN: Correct.

MS: At the 7-11, when you said you, she, I asked and you and she said, you said she was by herself.

JN: Correct.

MS: And there was nobody else that came up that had left that you had contacted. So, we're talking about one female. Um, then there's a span from 1:25 to 1:29 apparently comm 1 asked if you were okay, and apparently you respond that you're okay, and they check on you.

JN: I, again, I...

KR: You're talking five minutes?

MS: Yea, four minutes.

SS: Four minutes.

JN: I, again, I don't recall. I mean, you guys have the unit history. I...unintelligible...

MS: Okay, and then, as soon as they ask you that, uh, then you clear with an FI.

JN: Okay.

MS: Okay.

SS: Which you said, just for the record, that you didn't take an FI card, but you may have hit the button that said field interview, but there was no field interview.

JN: I could have hit the FI button, or I could have just said it on the radio, cleared FI.

SS: But, to your knowledge, you do not recall taking an...

JN: To my knowledge, I don't remember...

SS: ...taking an actual field interview card.

JN: ...taking an actual field interview card.

MS: But, to your knowledge, when we initially asked you about that first stop, you didn't even recall whether or not you had run her, or got her name, or ID, or anything.

JN: Correct. I was just going on what I remember of that stop, 'cause it was a nothing stop. Like I said, I was just trying to see if she was a witness or a victim.

MS: Okay. But the problem is, it's not a nothing stop, because the discrepancies between what you told us originally the stop being at 7-11, which is 339 Jackson on the north side of the street, I'm sorry, south side of the street, and the fact that you on dispatch comm 1, the main channel, you verbally put yourself off at 254 Jackson with that person in which you advised Code 4, and that is on the north side of the street.

JN: Okay.

MS: All right, so that is a, there, it is a something.

JN: Right.

MS: Because there's discrepancies here.

JN: Right.

MS: There's discrepancies in what your unit history says and what you've told us, and what witnesses and the complainant has told us.

JN: Okay.

MS: We're trying to get all these facts together, so that we can sort them out, and come to some conclusion of what happened here this night.

JN: Correct.

MS: Because it's serious. There's serious allegations here, and when we have holes and gaps, and, "I don't remember" and "I don't know" we're trying to put the puzzle together.

SS: Just so you understand, the complainant, as he's saying, her, her statements match up more than your statements do, if that makes sense. So, so, what you're saying, like Mark said, there's a lot of discrepancies, but what she's saying without the benefit of ever seeing any of this, and giving us similar statements like you're doing, hers match up to the unit histories, the radio traffics, to what other people have said, but yours isn't matching up.

MS: Here's a, here's a female who doesn't know police jargon, doesn't know, you know, she's, you know, on the streets, and we're talking this is three and a half, four months later that we now get this information, and, like he says, the times in that person's statement, the times match up, the dates match up, the name given on the, on the, uh, that she gave you matches up, the fact that she said, "He ran my name right in the 7-11 parking lot." Or, I'm sorry, not in the 7-11 parking lot. She says, "He ran my name." So we knew that you had run her name.

JN: Okay.

MS: She knew that, but you did the stop, and you didn't remember her even doing that.

JN: I stop a lot of people. I can't...

MS: I understand, but, you know, we're specifically dealing with this stop, which...

JN: Right.

MS: ...you know...

JN: I'm trying to give you as clear and concise statement as I can from my recollection.

MS: Did she seem to you at that first stop under the influence of either drugs or alcohol or did she have any kind of, uh, paraphernalia, contraband, or anything on her that you took from her.

JN: No.

MS: Nothing.

JN: Nothing.

MS: Okay.

SS: Do you recall either taking a methamphetamine pipe, a scale, any type of narcotics, controlled substance, or any type of weed, or marijuana, or marijuana baggie?

JN: No.

MS: And it's your statement that you did not contact her here and drive her over behind 254, where you actually put yourself off on dispatch?

JN: That's right.

MS: It's your statement that you did contact her in front of the 7-11...

JN: Around that area, yes.

MS: Okay, and my question is you did not take her from that original contact to the area behind 254 Jackson, where you put yourself off?

JN: Correct.

MS: And you can't explain why you put yourself off at 254 Jackson.

JN: I ...

MS: On the first stop.

JN: On the first stop, honestly I don't know why. I might have mistaken the numbers, I don't know why.

KR: What kind of distance are we talking about?

MS: Um, it's probably a good, uh, from this location to the back area back here, it's probably a good 300 yards, or more, or more.

SS: I can tell you from here, because this is the second area we're looking at, it's exactly 1536 feet from here to here, 'cause we measured it.

KR: Okay.

SS: So, it's a good distance.

KR: Is this a street here?

SS: This is a street, uh, a dead end street, not a cul-de-sac, but a dead end street, where there's a soundwall at the end, and there's probably 15, between 10 to 15 houses, and it's a residential street. And, as I said, this is actually more, be more in line here.

KR: These houses back up to this hotel?

SS: And the houses...correct. And then there's a hotel, and I don't want to mark his thing, but, yea, there'd be a hotel here, then the 7-11. It is actually moved a little bit, uh, towards me. And then going to the second stop, was, uh, you're saying again, there was at that time, you went back here to write a police report. You're saying that you never went over here, nor did you ever contact her over...unintelligible...and if I told you that there are other people that have come forward in the course of our investigation, and they said they saw a marked Hayward police car over here.

JN: They may have seen it.

SS: And you, and you making a, a contact with, you making a contact with her.

JN: No.

SS: And, and, we have uh, a six-pack line up, like, you know, like we do with, with other, with bad guys, and we put your photo in there and people picked you out. They say that you were the officer involved.

JN: I, I, I wouldn't, I don't even remember going up that street.

SS: So you don't remember driving over here at any time, making a u-turn down here, and then driving back?

JN: I may have some other night, or earlier that night, or I've been down that street, but on that incident, no, I do not.

MS: One of the things, I drew it, it's a lit...it's pretty close to the same as yours, but the actuality is Park runs pretty much almost identically right across from Jackson.

KR: Okay.

MS: Okay. 7-11 is 339, then you've got the motel, okay, then you've got Park, uh, Kragen, and then you've got 254, so that's the distance we're talking about.

SS: And this is, Jackson is a 4-lane, 2-lane, actually 2 or 3?

MS: Three lanes...

SS: Three lanes, so it's a wide street.

MS: Six lane, six lane road. Now...

KR: That's that dead-end street there?

MS: Yes, this is the continuation of Park, which dead-ends right here. And there's quite a few houses as you go from here now. I'd say there's probably at least...

SS: 10 to 15 houses.

MS: 10 to 15 houses.

KR: So does Park go straight across, or jog like we're looking at over here?

MS: No, it's more straight across.

SS: It's more straight across.

KR: Okay.

MS: Okay. And, the problem is he says you've got witnesses saying that the contact is here, which he, he does state that, even though his unit history shows him putting himself off way over here.

SS: And this is, this would be the parking lot here...unintelligible...

MS: Yea, here's the parking lot back here.

SS: Which is where the number, and we're saying that the numbers are back and the gold writing that they have on the glass...unintelligible...

MS: And there's two small numbers out here. Out here, it's same kind of numbers, I think there's some trees that dot the sidewalk. At nighttime, you can't be in this parking lot and look all the way across here and see those numbers. Can't do it.

KR: Um hm.

MS: Um, and I can understand what he said, but if you're driving up, your focus, if you're looking ahead to the call, and you now see a female up here, how are you going to be looking back here, when you're saying you're going to go off here and stop her?

JN: Now, there are times where I do look at addresses as I'm driving down the street.

MS: Sure, and I understand that.

JN: And, it could have been that I saw that address, and then as I was driving down, I put myself off on that stop with that address, um.

SS: But what you have to understand, where...

JN: I understand what you guys are...

SS: You know and the common sense thing is that this goes before the District Attorney, and we're explaining what you're explaining to us...

JN: Right.

SS: ...and now we go back, and I say, well Mr. District Attorney, well he's saying that, you know, and the DA is going to say, well common sense would tell you that any patrolman with any experience would go off at this, why's he going to look over his shoulder back to several different businesses down and say, "Oh, I'll be off at 254." Or that was a, like you said, 7-11, the common sense thing would be, "I'm at 7-11, and I'm parked by 7-11 at Jackson & Sycamore."

JN: Right.

SS: And then the coincidental thing is this is where we have you with her with the alleged misconduct happening back here is what we're, we're being told that. That's what we don't understand.

JN: And, see I, I couldn't, I don't know.

MS: And you've got a, the 19 minute time frame that's off.

SS: You've got a 19 minute time frame, I mean, it is what it is, and we can't make it anything else.

JN: Right.

SS: But, when the DA makes a decision whether or not to charge you with, with a criminal, you know, case, what are we going to do? All we can do is give him what you're telling us, unless you can, unless you want to talk to Kathy, and there's something more that you want to tell us now, this is what we gotta give him, and, and you're a smart guy. What are they going to say when they see this?

JN: No, I understand. I don't understand why I would have said 254. I honestly don't. Why I said that, I have no clue, and whether it was just a mistake in me seeing that number address before, maybe. I don't know. Could I have been in front of, or talking to her at the time when I was actually putting off the location? And she realized it was 254, where 254 was? I don't know.

KR: I want to take a break for a minute.

SS: Sure. Okay. Let me, uh, yea, it's uh, 3:47. We'll be taking a break.

MS: Turning the tape off here.

TAPE OFF

TAPE RESUME

MS: You know I just mark this to where, like when he's clearing and he's off and stuff, or did, you guys could probably figure it.

KR: Yea, we can probably figure it out.

MS: Okay.

SS: This is inspector Steve Schwartz, uh, we're back on, uh, the tape at 4:34 p.m. Now, after talking to Ms. Rains, she's decided to have her client, uh, no longer speak to us, so we're going off the tape now. 4:34 p.m., uh, November 17th, 2004.

END OF TAPE TWO - SIDE A